

Cooperative Governance in South Africa: A Case Study of Intergovernmental Relations in the Provision of Housing

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DECLARATION

I, Thembinkosi Sizo Simo Zulu, declare that this dissertation is my unaided work. All citations, references and borrowed ideas have been duly acknowledged. It is being submitted in partial fulfillment of the requirements for the degree of Master of Social Science (*Policy and Development Studies*), in the School of Social Sciences, College of Humanities at the University of KwaZulu-Natal, Pietermaritzburg, South Africa. None of the present work has been submitted previously for any degree or examination in any other University.

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Date

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DEDICATION

I wish to dedicate this dissertation to the memory of a generation of women that left an indelible mark not only in my life but that of our family. These are my late grandmother Ettie Matilda Zulu; my late mother Nonhlanhla Zulu; & my late sisters, Nobuhle, Nolwazi and Zanele.

ABSTRACT

The struggle for adequate housing is among the key features of life in South Africa. One of the key questions posed in this dissertation is how does the system of intergovernmental relations and cooperative governance in South Africa enable or hinder the provision of housing. This dissertation considers the challenges facing the respective spheres of government, and considers what cooperative governance entails in a system of intergovernmental relations. It is argued here that an extensive legislative and policy framework for intergovernmental relations and cooperative governance exists. However, the relationship between the three spheres of government do not always promote the constitutional objectives of cooperative governance which impacts on how socio- economic rights such as the provision of adequate housing are implemented.

This study identifies some of the systemic and structural aspects of intergovernmental relations that impact on cooperative governance, especially with regards to how other spheres of government relate to local government. It is argued here that the provision of housing is not a basic service delivery function of local government, yet national and provincial governments have delegated many of their responsibilities to local government. This study shows that such delegation of functions adds to the already existing strenuous basic service delivery obligations of local government (such as that of water and sanitation). The study concludes that the successful delegation of functions to other spheres of government in a system of intergovernmental relations requires good cooperative governance.

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ABBREVIATIONS/ACRONYMS

ANC - African National Congress

COGTA - Cooperative Governance & Traditional Affairs

DPLG - Department of Provincial and Local Government

DFI - Development Finance Institution

EAAB - Estate Agency Affairs Board

FFC - Financial and Fiscal Commission

FOSAD - Forum of South African Directors-General

HDA - Housing Development Agency

IDP - Integrated Development Programme

IFP - Inkatha Freedom Party

IGF- Intergovernmental Forum

IGR - Intergovernmental Relations

IRFA - Intergovernmental Relations Framework Act

MCB – Municipal Demarcation Board

MEC - Member of Provincial Executive Council

MFMA - Municipal Finance Management Act

MinMec - Ministers and Members of Executive Council

MIG - Municipal Infrastructure Grant

MIP - Municipal Infrastructure Programme

NCOP - National Council of Provinces

NGO - Non-Governmental Organization

NHBRC - National Home Builders Registration Council

NHFC - National Housing Finance Corporation

NP - National Party

NSDP - National Spatial Development Programme

NURCHA - National Urban Reconstruction and Housing Agency

PCC - President's Co-ordinating Council

PGDS - Provincial Growth and Development Strategy

PGDP - Provincial Growth and Development Plan

PIF - Provincial Intergovernmental Forum

PoA - Programme of Action

RDP - Reconstruction and Development Programme

RHLF - Rural Housing Loan Fund

SALGA - South African Local Government Association

SHRA - Social Housing Regulatory Authority

RSA - Republic of South Africa

CHAPTER ONE: INTRODUCTION

1.1 BACKGROUND

When South Africa became a constitutional democracy in 1994, the country was faced with enormous urban development challenges (Narsiah, 2011). Among these challenges were, and continue to be increased urbanisation, urban sprawl, poverty and underdevelopment – placing a high demand for public services on government, in particular on local government. The Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution) in section 26 enshrines certain socioeconomic rights: among them is the right to adequate housing. Oliver (1996) argues that the provision of adequate housing is one of the critical components in addressing political, economic and social problems facing South Africa.

The democratic South Africa had borne a significant change in the reconfiguration of the State during its transition. The functions and powers of the three spheres of government - national, provincial and local - were redefined, as were and are their relationships and interrelationships under the principles intergovernmental relations and cooperative governance. Despite the interest being shown in South Africa's evolving and complex system of ensuing intergovernmental relations (IGR), the subject has not been extensively researched or theorized particularly intergovernmental relations in facilitating service delivery.

South Africa has adopted a system of co-operative government. Chapter Three of the Constitution, in section 40(1) states that "Government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated". Layman (2003) explains that the "distinctive" element to which the Constitution refers, means that each sphere exists in its own right; it is the final decision-maker on a defined range of functions; and is accountable to its constituency for its decisions. According to Opeskin (1998) the term "intergovernmental relations" is commonly used to refer to relations between central, regional, and local governments that facilitate the attainment of common goals through cooperation. Used in this sense, mechanisms

for intergovernmental relations may be seen as employing consensual tools for the mutual benefit of the constituent units of the state. Ile (2010) suggests that the aim of intergovernmental relations therefore, is to enable governmental activities (primarily service delivery), through synergy, efficiency and effectiveness in delivering services, to sustain democracy and strengthen delivery capacity across all spheres of government for the common good.

One of the primary objectives of this study is to identify and analyse the key features of South Africa's system of intergovernmental relations and co-operative governance, and to examine the nature of intergovernmental relations with reference to service delivery – particularly those pertaining to the provision of housing. The rationale for focusing on housing is because the Constitution has delegated the responsibility to provide housing to provinces (Schedule 4, Part A), yet municipalities are facing the brunt of community discontent when government fails to deliver housing. This illuminates the problem of co-operative government, and the nature of intergovernmental relations that have evolved as a result.

Thornhill's definition that "intergovernmental relations consist of all the actions and transactions of politicians and officials in national, sub-national units of government and organs of the state" informs this study (2002: 8). This will be done by focusing on the provision with use of municipalities in order to determine the relationship (whether constructive or obstructive) between them and the national and provincial government departments responsible for housing.

This study is imperative because there has been a steady increase in service delivery protests in South Africa with communities expressing their demands for housing, among other things. The national government has acknowledged the shortcoming of co-operative government in South Africa in its report, *The State of Local Government in South Africa* (COGTA, 2009) where it is stated that there is no link between national indicators used to assess the comparative performance of municipalities and the planning of the powers and functions assigned to them by other spheres

of government. It is against this background that this study seeks to examine South Africa's system of co-operative government

This research wishes to critically review South-Africa's regulatory framework of co-operative government and intergovernmental relations by examining the co-operative governance strategies employed by municipalities and the nature of intergovernmental relations with regards to the municipalities mandate for the provision of housing.

1.2 CONCEPTUAL FRAMEWORK

Cooperative governance has been a popular buzzword in contemporary political science. The literature on cooperative governance reflects a growing interest of the social science community in the shifting pattern in styles of governing. As such, the theory on governance has become pertinent in any discussion on how a country is governed. According to Rhodes (1996 in Stoker 1998: 17) governance signifies "a change in the meaning of government, referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed".

As noted by Hooghe & Marks (2001) there is a widespread body of literature on governance, cooperative governance and intergovernmental relations. According to the literature on governance, the changing relationships between different levels of policy making in government constitute a new politics. Marks (1993: 392) one of the principal theorists, defines co-operative governance as "a system of continuous negotiation among nested governments at several territorial tiers". The theory sees all these 'tiers' (although in South Africa it would be spheres of 'government') local, national, global, etc as important players in contemporary politics, and views political power as being distributed across or residing within different levels of government. Thus power here is conceived as being shared by various actors and institutions across the whole scale spectrum rather than principally being located within states 'at the centre' (Marks, 1993: 392). It

appears as if the constitutional phrase ‘co-operative government’ (section 40) embodies this notion.

1.3 RESEARCH PROBLEM & OBJECTIVES

The primary objective of this study is to review the system of cooperative governance and intergovernmental relations in South Africa. This study identifies and analyzes key features of service delivery through the intergovernmental relations system with special reference to housing service provision.

Government itself has acknowledged that there are problems with cooperative governance and intergovernmental relations. This study reviews the system of cooperative governance and intergovernmental relations in South Africa. The objectives of this study are therefore:

- To conceptualise co-operative government.
- To conceptualise intergovernmental relations.
- To determine the legislative and policy framework of co-operative government and intergovernmental relations in South Africa.
- To determine the legislative and policy framework of co-operative government and intergovernmental relations regarding the provision of housing in South Africa.
- To determine the respective functions of the different spheres of government with regards to the provision of housing
- To determine the challenges facing municipalities when providing functions on behalf of other spheres of government.

1.4 RESEARCH QUESTIONS

The provision of housing has been identified as a problem of cooperative governance with complex intergovernmental relations. In this respect, more specific questions will be asked.

Namely:

- What are the official intergovernmental policy arrangements between the national, provincial and local government with regard to the provision of housing?
- What are the implementation challenges facing municipalities with regard to the provision of housing?
- What are the opinions of various stakeholders regarding why municipalities are incapable of providing adequate housing to its communities?
- Are intergovernmental relations between spheres of government in line with Section 41(1) of the Constitution? As stated earlier, the Constitution of the Republic of South Africa, 1996 stipulates in Section 41(1) that “All spheres of government and all organs of state within each sphere must exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere” In this regard, all spheres of government should cooperate with one another in mutual trust and good faith by:
 - 1) fostering friendly relations;
 - 2) assisting and supporting one another;
 - 3) informing one another of, and consulting one another on matters of common interest;
 - 4) coordinating their actions and legislation with one another;
 - 5) adhering to agreed-on procedures; and
 - 6) avoiding legal proceedings against one another.
 - 7)

1.5 RESEARCH METHODOLOGY

The study will commence with a review of the literature on intergovernmental relations and cooperative governance in order to establish a conceptual framework upon which the study will be based. It will then determine the system of co-operative government in South Africa and the role(s) of different spheres of government in the provision of housing by reviewing the legislative framework. It will incorporate work already conducted on co-operative governance and

intergovernmental relations, as well as the provision of housing provision in South Africa by consulting secondary data.

The present study employs a qualitative research methodology, using qualitative methods of collecting data. According to Durrheim (2006: 47) qualitative researchers collect data in the form of written or spoken language, or in the form of observations that are recorded in language, and analyse the data by identifying and categorizing themes. Documents and reports were analysed in this study in order to understand conceptions, forms and nature of intergovernmental relations and cooperative governance in South Africa. The study mainly depended on written sources of data, such as academic books, journal articles, internet sources and government policy and legislation around intergovernmental relations and housing.

Various policy documents and Acts were analysed and then summarised into tables for easy reference. The study also used other research and theses that investigated on intergovernmental relations in general and with respect to housing in particular in South Africa and selected some municipalities for review.

To analyse data, the study used qualitative data analysis techniques. These are based on the statement by Babbie (2005) that “the purpose of qualitative research is to understand rather than to predict”. This study seeks to understand intergovernmental relations and cooperative governance with respect to the provision of housing. Content analysis, in particular was used. Categorising themes used to explore secondary data were;

- Conceptualisations of intergovernmental relations and cooperative governance
- Powers, functions and roles of different spheres of government in the provision of adequate housing. In this regard, the experiences and challenges through intergovernmental relations were explored.
- Nature of intergovernmental relations and cooperative governance

STRUCTURE OF THE DISSERTATION

Chapter One: Introduction

This chapter provides an introduction to the study. It explores the background to the study and the reasons for choosing this topic. In addition, the chapter discusses the objectives of the study and the key questions which the study seeks to answer.

Chapter Two: Conceptual Framework

The chapter is a culmination of the literature review. It will present the principal theories upon which the study will be anchored. Relevant terms and definitions are conceptualized. This chapter has a brief discussion on concepts such as democracy governance and housing development. The chapter will also look at what constitutes co-operative government and intergovernmental relations. It elaborates on the importance of resources, cooperation and coordination in the process of implementation as identified by different theorists.

Chapter Three: Intergovernmental Relations and Cooperative Governance in a Post-Apartheid South Africa:

Chapter three will present the methodology and the selection strategy used for the study. The chapter will also provide background information on the provision of housing in South Africa.

Chapter Four: Case Study: Co-operative Government and Intergovernmental Relations - The Provision of Housing

The chapter will present the case study component of the study. This chapter gives insight into the political and administrative configuration in South Africa. The chapter argues that municipalities where the mandate to deliver housing services to a large community with little resources and lack of financial management is troublesome. This has led to severe implementation challenges, including the municipality facing service delivery protests.

Chapter Five: Findings and Analysis

The chapter presents will present, interpret and analyze the findings on intergovernmental relations and cooperative governance with respect to the provision of housing.

Chapter Six: Conclusion

This chapter will conclude the study. It will give a synthesis of the study, highlighting and reflecting on the current state of co-operative government and intergovernmental relations. The objective is to consider issues for further investigation to enhance our system of intergovernmental relations and cooperative governance.

CHAPTER TWO: CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION

This chapter presents a brief discussion on concepts such as democracy, public policy, cooperative governance and intergovernmental relations. The chapter will also look at what constitutes cooperative government and intergovernmental relations. It elaborates on the importance of resources, cooperation and coordination in the process of implementation as identified by different theorists. The main aim of the chapter is to conceptualise and analyse governance. It will be argued that policies and programmes are rarely the domain of a single organisation or sphere of government, but takes place in a multi-organisational and intergovernmental context. Therefore, it is argued, this necessitates an environment of cooperative governance and intergovernmental relations.

2.2 FORMS OF GOVERNMENT

The literature on democracy is widespread. Diamond (2014:1) argues that democracy can be seen as “a system of government with four elements: a political system of choosing and replacing the government through free and fair elections; the active participation of the people, as citizens, in politics and civil life; the protection of human rights of all citizens; and the rule of law, in which the laws and procedures apply equally to all citizens”. Democracy can thus be defined as a form or system of political rule that is formal and characterised by structures and processes by which the state would be governed and protected by a constitution or legislative framework. The study moves from the proposition that in order for cooperative governance and an intergovernmental relations system to exist and function efficiently and effectively, governments need to be democratic.

A government is the system by which a state or community is governed (Frank, 1999). Furthermore, government is occasionally used as a synonym for governance. Government is the means by which state policy is enforced, as well as the mechanism for determining the policy of the state. A form of government, or form of state governance, refers to the set of political systems and institutions that make up the organisation of a specific government.

Watts (1994:75-78) argues that although nation states are treated as discrete and unified entities as far as international politics is concerned, each nation state incorporates a range of internal divisions and levels of power. Most significantly, there are territory-based and local divisions between central or national government and various forms of provincial, state and local government. The two most forms are (1) a federal and (2) a unitary system of government. Each will be briefly described below.

2.2.1 A Federal System of Government

According to Hague & Harrop (1987: 169-170), a federal form of government (or federalism) is “a system of government in which legal sovereignty is shared between the central and the other levels of government. Each level or sphere of government, central and state, has constitutional authority to make some decisions independently of the other. Citizens of a federal state remain subject to the authority of both the central and state governments, each of which impacts directly on the citizen”. Barton & Chappell (1985: 354) contend that, federalism is a system of government in which there is a constitutional division of power between a national government and state or constituent governments. Similarly, Dent (1989: 169) describes federalism as a somewhat elusive concept which refers to both a constitutional dispensation and to a means of exercising power. Dent argues that federalism applies to the decentralised ordering of an existing state where various geographical parts are inhabited by people with separate ethos and identity which they wish to preserve within a single federal nation; and as process of government, federalism is essentially a form of power sharing. Turner & Hulme (1997) reason that a federal state is a multi-layered structure with autonomous decision-making distributed among levels of government.

Garson & Williams (1982: 32) state that federalism involves the organisation of national, state and local government relations. It includes the ways in which levels of government interact and how the levels are interrelated. The federal system involves more than the mere creation of separate spheres of government. It involves constitutional principles, laws, and court interpretations that settle issues of allocation of authority between national and state governments. Asmal (1994 cited in Sokhela, 2006: 61) argues that what differentiates a federal constitution from a unitary one, in relation to the competence of government, is that the allocation of power between a federal and provincial government is delineated in a federal constitution. In federal governments, states or other subnational units share sovereignty with the central government, and the states constituting the federation have an existence and power functions that cannot be unilaterally changed by the central government. In some cases, it is the federal government that has only those powers expressly delegated to it.

2.2.2 A Unitary System of Government

Hague & Harrop (1987:176) state that in a unitary system of government (or unitary state) sub-national governments, whether regional or local, may make policy as well as administer it, but they do so within a certain parameters determined by the national government. Turner & Hulme (1997) argue that a unitary state is characterised by a single or multi-tiered government in which effective control of government functions rests with the central government. Hattingh (1998: 115-6) states that a unitary system of government demonstrates the following; supreme power is indivisible unlimited, the national legislative authority is empowered to promulgate, approve and amend laws concerning any aspect affecting the state; and the constitution of a unitary form of government would not limit the authority of the national legislative authority unless the aforementioned agrees with such limitations. In a unitary state, subnational units are created and abolished and their powers may be broadened and narrowed, by the central government. Although political power in unitary states may be delegated through devolution to local government by statute, the central government remains supreme; it may abrogate the acts of devolved governments or curtail their powers.

Moreover (Hattingh, 1998) argues that further principles are that the legislative authority may: create financial resources and establish executive institutions for the rendering of its functions; incorporate separate governmental units into hierarchical structure (if such structures have been recognised and approved by it); assign powers, authority and financial resources to spheres of government and determine and regulate and regulate intergovernmental relations

The federal/state relationship in the United States, for example, may often be more appropriately viewed as one in which a collaborative policy-formation process rather than implementation process is occurring. It does however, have salient points that can be relevant even for a more or less unitary system of government such as in South Africa. Some of these salient points are mentioned by Hill & Hupe; issues relating to the securing the collaboration of ‘reluctant partners’ are by no means absent from other, possibly simpler, constitutional structures of intergovernmental relations. It is important, for example, to note; many central/local government relationships in the unitary system lay claim to a measure of autonomy; policies that require collaboration between separate ministries or agencies; and the factors analysed by Lipsky that convey a measure of autonomy to street-level bureaucrats” (2002: 73).

In light of the preceding discussion on the two main systems of government, namely the unitary and the federal systems of government, what emerges is that of governance, in short, is how governments govern.

2.3 GOVERNANCE

There is a widespread body of literature on governance. According to the literature on governance, it encompasses broad issues such as the changing relationships between different levels of policy making in government (Hooghe & Marks, 2001). Governance has been one of the most popular buzzwords in contemporary political science. As with any term shared by numerous fields of research, as well as everyday language, governance is encumbered by a plethora of definitions and applications. Theoretical work on governance reflects the interest of the social science community

in a shifting pattern in styles of governing. The traditional use of governance and its dictionary entry define it as a synonym of government. Yet in the growing work on governance there is a redirection in its use and import. Rather governance signifies “a change in the meaning of government, referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed” (Rhodes, 1996 in Stoker, 1998).

Reviews of the literature generally conclude that the term ‘governance’ is used in a variety of ways (Rhodes, 1996; Stoker, 1998: 17). Bevir (2010) argues that at the most general level, governance refers to theories and issues of social coordination and the nature of all patterns of rule. More specifically, governance refers to various new theories and practices of governing and dilemmas to which they give rise. Furthermore, Bevir (2010) states that governance draws attention to the complex processes and interactions that constitute patterns of rule. It places a focus on the formal institutions of states and governments with recognition of diverse activities that often blur the boundary of state and society. For the World Bank governance is at times reduced to a commitment to efficient and accountable government. There is, however, a baseline agreement that governance refers to the development of governing styles in which boundaries between and within public and private sectors have become blurred (Stoker, 1998: 17). As such, governance is a normative concept. Moreover, Stoker argues that governance as a concept recognises the interdependence of public, private and voluntary sectors, especially so in developing countries, (ibid: 18).

Stoker (1998: 18) claims the governance works if it helps us identify important questions, although it does claim to identify a number of useful answers as well. It provides a reference point which challenge many assumptions of traditional public administration. Stoker identifies propositions pertaining to governance. Each will be briefly discussed below.

(a) Governance refers to a set of institutions and actors that are drawn from but also beyond government.

Stoker argues that the first message of governance is to challenge constitutional/formal understandings of systems of government. Governance suggests that institutional/constitutional perspectives, such as the Westminster model, are limited and misleading. Stoker (1998:19) contends that this structure of government is fragmented with a maze of institutions and organizations. It implies that in a unitary state there is one centre of power. In practice there are many centres and diverse links between many agencies of government at local, regional, national and supranational levels. There is a complex architecture of systems of government which governance seeks to emphasize and focus on. The governance perspective also draws attention to the increased involvement of the private and voluntary sectors in service delivery and strategic decision-making. Responsibilities that were previously the near exclusive responsibility of government are now shared. Contracting-out and public-private partnerships are now part of the reality of public services and decision-making. Stoker argues that the governance perspective contends for a shift of focus away from formalities and a concern with what should be, to a focus on behaviour and what is. In the modern world of government “what is” is complex, messy, resistant to central decision and in many respects difficult to key policy-makers let alone members of the public to understand. Broadly the governance perspective challenges the conventional assumptions which focus on government as if it were a ‘stand-alone’ institution divorced from wider societal forces (ibid: 19)

(ii) Governance identifies the blurring of boundaries and responsibilities for tackling social and economic problems.

Stoker (1998:21) argues that the governance perspective not only recognises increased complexity in our systems of government, it also draws to our attention a shift in responsibility, a stepping back of the state and a concern to push responsibilities onto the private and voluntary sectors and, more broadly, the citizen. However, Putman (cited in Stoker, 1998:21) reasons that in reality, governance is connected to the concern about social capital and social underpinnings necessary for effective economic and social performance. The shift finds institutional expression in the

blurring of boundaries between the public and private, which in turn finds substance in the rise of a range of voluntary agencies variously labelled voluntary groups, non-profits, non-governmental organisations and community-based organisations and the like. These organisations range over a wide variety of social and economic issues and operate in the context of what has been termed a 'social economy' that has emerged between the market economy and the public sector. The governance perspective demands that these voluntary sector organisations be recognized for the scale and scope of their contribution to tackling collective concerns without reliance on formal resources of government.

(iii) *Governance identifies the power of dependence involved in relationships between institutions involved in collective action.*

Rhodes, (cited in Stocker, 1998:22) argues that in a governance relationship no one organisation can easily command, although one organisation may dominate a particular process of exchange. Nation-level government or another institution may seek to impose control, but there is a persistent tension between the wish of authoritative action and dependence on the compliance and action of others. Kooiman, (cited in Stocker, 1998:22) emphasises the point that governance perspective is always an interactive process because no single actor, public or private, has the knowledge and resource capacity to tackle problems unilaterally.

(iv) *Governance recognises the capacity to get things done which does not rest on the power of government to command or use its authority. It sees government as able to use new tools and techniques to steer and guide.*

Kooiman & Van Vliet (cited in Stoker, 1998:24) classify the tasks of government in governance in the following way: (a) (de)composition and co-ordination (b) collaboration and steering (c) integration and regulation. The first task involves defining the situation, identifying key stakeholders and then developing effective linkages between the relevant parties. The second is concerned with influencing and steering relationships in order to achieve desired outcomes. The third is about what is called systems management (Stewart, 1996 in Stoker, 1998:24). It involves

thinking and acting beyond the individual sub-systems, avoiding unwanted side effects and establishing mechanisms for effective coordination.

Stoker's propositions highlight the notion that governance refers to a set of institutions and actors that are drawn from but also beyond government. It identifies the blurring of boundaries and responsibilities for tackling social and economic problems. The propositions elucidate the relevance and importance of intergovernmental relations and cooperative governance in any system of governance, which is now discussed below.

2.3.1 Intergovernmental Relations

Intergovernmental relations encompass the relationship between two or more governments of separate nations or the relationship and interactions between different levels of the same government. This study is concerned with the latter. Wright (1988:1) defines intergovernmental relations as "an interacting network of institutions at the three levels, which has been created to enable the various parts of government to effect institutional arrangements in a coherent manner". According to Opeskin (1998: 11), the term "intergovernmental relations" is commonly used to refer to relations between central, regional, and local governments that facilitate the attainment of common goals through cooperation. Used in this sense, mechanisms for intergovernmental relations may be seen as employing consensual tools for the mutual benefit of the constituent units of the state. Thornhill (2002: 8) argues that "intergovernmental relations consist of all the actions and transactions of politicians and officials in national, sub-national units of government and organs of the state". Ile (2010: 53) contends that the aim of intergovernmental relations therefore, is to enable governmental activities (primarily service delivery), through synergy, efficiency and effectiveness in delivering services, to sustain democracy and strengthen delivery capacity across all spheres of government for the common good.

Intergovernmental relations can also refer to the relations within governments bodies, both vertical and horizontal. Van der Walt & Du Toit (1997: 162) argue that intergovernmental relations refer to “the mutual relations and interactions between government institutions at horizontal and vertical levels”. In the national sphere of government, examples of vertical structures of authority are that of Parliament; Cabinet ministers and Departments (those government bodies in the same sphere of government but on different hierarchical levels) or the relations between a Cabinet minister and the head of his or her department (individuals in the same sphere of government but on different hierarchical levels). Vertical intergovernmental relations are important for the establishment of lines of authority and maintaining accountability and responsibility as well as facilitating control. Horizontal intergovernmental relations occur in governmental bodies between individuals and institutions at the same hierarchical level, for example between ministers and Cabinet in the national sphere of government (Hattingh, 1998: 27-29).

Roux *et al.*, (1997: 171-172) identify four approaches to intergovernmental relations: (i) the democratic approach, (ii) the constitutional approach/the legal approach, (iii) the financial approach and (iv) the normative-operational approach. They argue that these approaches illustrate the extent to which intergovernmental relations within government are structured. Each will be discussed briefly below:

(i) The Democratic Approach

The democratic approach to the study of intergovernmental relations emphasises the extent provincial and local government’s right to self-determination, and autonomy. As a result, supporters of this approach are opposed to the centralisation of authority and strongly favour greater devolution to subordinate authorities (Hattingh, 1998: 11-12).

(ii) The Constitutional Approach

This approach suggests that the constitution and other legislative provisions may be used as a point of departure in the study of intergovernmental relations in order to determine the framework for intergovernmental relations. Hattingh (1998: 11) argues that this approach accepts the factual information contained in legislation as a constant (until amended by subsequent legislation) and also accepts that relations between governmental bodies exist exclusively within the framework of clauses permitting such relations.

(iii) The Financial Approach

The financial approach examines the nature of the financial or fiscal relations among and between the different spheres of government (Hattingh, 1998: 11). Depending on the type of government (whether unitary or federal, constitutional and legislative framework as well as institutional arrangements), the different factors informing the type of fiscal relations in the government, are regarded as important determinants of provincial and local government autonomy.

(iv) The Normative-Operative Approach

The normative-operative approach examines the overall importance awarded to the pertinent norms and aspirations or objectives of intergovernmental relations. It aims to analyse the total operational reality of governmental relations without one aspect of intergovernmental relations being overemphasised at the expense of another (Hattingh, 1998: 11). In this regard, intergovernmental relations are practised within a public administration environment, it means that there are norms and values to which aspires (Mathebula, 2004: 131).

What can be gathered from the above discussion of the four analytical approaches of intergovernmental relations is that they offer different significant aspects in terms of conceptualising and understanding intergovernmental relations. These approaches may best explain the nature and character of intergovernmental relations as practiced by any government in

any particular country being studied. These approaches also illustrate approach theorists in support of an intergovernmental relations system based on frameworks that emphasise the importance of democratic governments centred on constitutional, legislative and policy frameworks that address issues relating to how spheres of government can function effectively. Besides the significance of intergovernmental relations, this study posits that co-operative governance is an important factor in any study on governance – especially a study on the provision of a public service such as housing. This is a focus of the next section.

2.3.2 Cooperative Governance

According to Malan (2005: 229) co-operative governance is a partnership among spheres of government requiring each government to fulfil a specific role. Marks (1993: 392) define cooperative governance as “a system of continuous negotiation among nested governments at several territorial tiers”. All these ‘tiers’ (local, national, global, etc.) are seen as important factors in contemporary politics, as well as how political power is being distributed across or residing within different levels of government. Power here is conceived as being shared by various actors and institutions across the whole scale spectrum rather than principally being located within states ‘at the centre’. De Villiers (1994: 430) argues that no sphere of government can function effectively without co-operation with the other because of the interdependency and interrelatedness of some governmental functions, spill-overs in services, scarce resources and poor economic conditions and popular accountability as well as grassroots pressure.

Ismail *et al.*, (1997:137) argue that, any form of governance, whether central, provincial or local, has as its objectives the achievement of the general welfare of the community by satisfying its identified needs through rendering effective services. Co-operative governance between national, provincial and local spheres require among other things clear guidelines, effective communication and closer cooperation to achieve objectives. (Nelana, 2005) argues that a prerequisite for effective cooperative governance is communicative rationality which entails a non-coercive, unifying, consensus building force of a discourse in which participants overcome their initial subjective views in favour of a rational agreement. Furthermore, Nelana argues that for effective

implementation of any cross-sectoral policy requires that cooperative governance processes have to be established on the ground and not just considered as some form of laudable principle. MacKay & Ashton (2004) states that one of the most important steps in moving towards operational cooperative governance is the identification of- and agreement on generic objectives by all the relevant, involved and affected sectors. This must be followed by the correct identification and development of organisational and coordinating arrangements and programmes that can effectively achieve these objectives.

Nelana (in Nealer & Naude, 2011: 110) emphasizes feedback, information sharing and co-ordination between government and civil society as crucial elements of cooperative governance. In this process, civil society participates in agenda setting and public policy formulation and implementation. Nelana also highlights that cooperative governance enhances openness and transparency in the formulation and implementation of social-economic policy. Edigheji (in Nealer & Naude, 2011: 111) identifies differentiated participation, resulting from ‘competition’ in formulation and implementation of planning that entrenches what cooperative governance seeks to resolve, namely: equalizing the voices of various stakeholders. National stakeholders have more power than the local.

Nealer & Naude (2011: 111) argue that of significance to the aforementioned objectives of COG is the existence of effective organizational arrangements (internal and external) of which two-way communication is first and foremost. This should lead to higher levels of visibility, transparency, accessibility and willingness of all committed actors to become involved and participate in a more active manner towards holistic and synergized group attempts of service delivery.

Having discussed governance, intergovernmental relations and its four analytical approaches and the need for cooperative governance, this paper now focuses on policy-making and implementation in a context of cooperative and intergovernmental relations.

2.4 POLICY-MAKING AND POLICY IMPLEMENTATION

According to Friend et al (cited in Mtshali, 2006: 12), a policy is a “stance that one articulates which contributes to the context within which a succession of future decisions would be made”. Anderson (cited in Hill & Hupe, 2002: 5) for example, views policy as “A purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern ... Public policies are those policies developed by governmental bodies and officials”. From such definitions it is gathered that policy is about means and ends related to one another. Simon (1976: 550) also argues that policy emerges from the play of economic, social, and political forces, as manifested in and through institutions and processes. As such, issues of governance become significant.

Puentes-Markides (2007: 4) argues that public policy is the action taken by government to address a particular public issue. Local, state, federal, and international government organizations all craft and implement public policy to protect and benefit their populations. According to Cochran and Malone (cited in Puentes-Markides, 2007) public policy involves the making of political decisions for implementing programs to achieve societal goals. Birkland (cited in Puentes-Markides, 2007) indicates that public policy is “a statement by government of what it intends to do or not to do, such as law, a regulation, a ruling, a decision, an order or a combination of these”. Peters (cited in Puentes-Markides, 2007) states that public policy is the “the sum of government activities, whether acting directly or through agents, as it has an influence on the life of citizens”.

Public policies communicate objectives, principles, strategies and rules of decisions used by government administration and legislation (Puentes-Markides, 2007: 11). According to Parsons (1995: 3) the idea of public policy has to do with the spheres that are designated as public as opposed to those which involves the idea of private. He argues that the idea of public policy presupposes that there is a sphere of life which is not private or purely individual, but held in common. Public policy is a “purposeful, goal-oriented action that is taken by government to deal with societal problems. Public policy involves many participants such as public actors (executive, legislative branch and the courts), private actors such as interest groups and citizens” (Volkomer, 2006).

According to Simon (1976: 550) policy-making is not, by and large, simply a matter of problem-solving, of taking some common goal and seeking the "best" or most cost effective "solution." It is rather a matter of choice in which resources are limited and in which goals and objectives differ and cannot easily be weighed against each other. Hence policy-making is a matter of conflict. There are very few pure public goods, that is, those which are available equally to all citizens. Most goods distributed by government confer differential benefits - some get more than others; some pay more than others. Much of the debate about them is precisely about these questions. Hence, in policy studies, one of the key questions in any study is often closely related to Lasswell's political question: who gets what, when, and how?

Stoker (1998: 19) argues that policy-making involves multiple organizations, from the government as well as from the outside. The policy issues are complex and even defining the policy problem is demanding. They may be classified as wicked problems: no definite problem, no rule for knowing if the problem is solved, and unique characteristics. Furthermore, they argue that setting policy goals, defining solutions, and implementation all require resources that are not held by any single organization or sphere of government, resulting in interdependence of the organizations and different spheres of government and institutions. The interdependence in turn provides the organizations considerable autonomy from central control. All this entails aspects of governance and therefore intergovernmental relations and cooperative governance as discussed earlier.

Parsons (1995: 464) posits that a policy is a hypothesis containing initial conditions and predicted consequences. If X is done at time t1, then Y will result at time t2. Parsons argues that implementation therefore is a process of interaction between the setting of goals and actions geared to achieve them (1995: 464). It is essentially an ability to forge links in a casual chain so as to put policy into effect. Implementation will become less and less effective as the links between all the various agencies involved in carrying out a policy form an "implementation deficit".

According to Parsons (1995: 464) goals have to be clearly defined and understood; resources made available, the chain of command capable of assembling and controlling resources; and the system able to communicate effectively; and control those individuals and organizations involved in the performance of tasks. It is really self-defeating for government to indicate that it wants to tackle an issue without making resources available for such. Government would commit itself to addressing an issue by clearly defining its goal in a White Paper or an Act of Parliament which develops to a program of action in South Africa's case informed by, the material conditions that citizens find themselves and guided by the Constitution among other things. The government would state its approach to policy issue by defining the problem, stating its goals or aims and objectives and the duty and responsibilities of those concerned on a policy issue especially government functionaries such as bureaucrats and the street-level implementers.

There is a distinction between policy implementation and programme implementation Brinkerhoff & Crosby (2002: 23) argue that policy implementation is rarely a linear, coherent process. Programs and projects have a beginning and an end; there are specific time-lines; targets and objectives clearly specified for each phase and plans and actions are defined to reach those targets. But with policy implementation, change is rarely straightforward. While policy statutes set goals and objectives, the extent to which those are clearly stated in terms of sequence of cause and effect can vary, and they are frequently vague or leave operationalisation until some later stage of the process. Brinkerhoff & Crosby (2002) state that as a result of aforementioned, policy implementation can often be multidimensional, fragmented, frequently interrupted, unpredictable and ongoing.

Hill & Hupe (2002: 72-73) considered Stoker's governance thesis (as outlined earlier), and state that Stoker contributes importantly in analysing the implications of the different layers of government. Taking his lead from Lindblom (1977), Stoker labels these top-down and bottom-up approaches 'authority' and 'exchange'. The authority approach involves suggesting ways to simplify or circumvent barriers to compliance and the exchange approach requires the achievement of co-operation. Thus, a third alternative to 'authority' and 'exchange', Stoker sees 'governance'

as an activity in which ‘reluctant partners are induced to collaborate. In this sense he takes up the argument from Stone (1989) that it is important to give attention to power to accommodate collective goals as opposed to power over recalcitrant others.

(i) Top-down approach to implementation

According to Parsons (1995:464) it is often argued that policy implementation requires a top-down system of control and communication, and resources to do the job. The argument is that decision-makers should not promise what they cannot deliver. Parsons argues that the top-down approach has a view of the policy-implementation relationship which is summed up in Rousseau’s *Emile*: “Everything is good when it leaves the Creator’s hands; everything degenerates in the hands of man” (1995: 466). The assumption is that at the top where decision-makers decide on a policy issue, they may be convinced that they have applied their minds properly and that they have come with the best policy decision, all which is left is implementation at the bureaucrat or street level.

The preference of the top-down models is for tiers, hierarchies, control and constraints, whereas for bottom-up models, spheres, networks or even markets constitute a more desirable state of affairs. The top-down model is regarded as rational model. It is imbued with ideas that implementation is about getting people to do what they are told, and keeping control over sequence of stages in a system; and about the development of a programme of control which minimizes conflict and deviation from the goals set by the initial ‘policy hypothesis’ (Parsons, 1995: 466). A criticism of the rational model is that it puts too much emphasis on the definition of goals by those at the top, therefore making it a top down approach and it is criticised for not taking into account the role of other actors in the implementation process (Parsons, 1995: 466).

A criticism of the top-down approach put forward by Hjern & Porter (cited in Parsons, 1995: 485) is that where there is a programme that is in the hands of a multiplicity of organizations it gives rise to a complex pattern of interactions which the ‘top-down’ frameworks (and practices) fail to

take into account, with the consequences that their theories do not satisfactorily explain implementation, often leading to policy failure (1995: 485).

(ii) Bottom-up approach to implementation

The bottom-up approach of implementation is one which sees the process as needing negotiation and consensus-building. The bottom up approach lays great stress on the fact that bureaucrats (or which Lipsky calls ‘street-level bureaucrats’) have discretion in how they apply policy. Professionals, such as doctors, teachers, and engineers have a key role in how policy is implemented. The nature of their work provides them the opportunities and responsibilities of control and delivery of a public service (Parsons, 1995: 469). More importantly, these two different policy approaches have implications for intergovernmental relations and cooperative governance. An important aspect of policy-making and policy implementation is that these processes are complex and highly interactive as Brinkerhoff & Crosby (2002: 6) argues. Parsons (1995: 491) argues that modes of delivery or ‘systems’ of policy delivery have become central in modern public sector. The delivery of public goods and services is very important, because it relates to the issue of policy implementation. This paper now focuses on the significance of policy coordination and policy communication with regards to intergovernmental relations and cooperative governance.

2.5 POLICY COORDINATION

With regards to policy co-ordination, Waldo (1953:86) defines co-ordination as the arrangement of group effort in order to provide unity of action in pursuit of a common purpose. This definition implies that the activities and functions of all spheres of government should not overlap and that no duplication should occur. Brinkerhoff and Crosby (2002) refer to inter-organisational problems which are directly relevant to intergovernmental relations system. They argue that the multi-actor, cross-sectoral, nobody-in-charge features of policy implementation create linkages among the various organisations, civil society groups, non-governmental organisations (NGOs), and the private sector entities with the role in the implementation process. These linkages distribute functions to those involved in ways that establish varying degrees of interdependency (Hjern &

Porter, 1981 & Mandell, 1990 in Brinkerhoff & Crosby, 2002: 118). These interdependencies create requirements for coordinated action in order to achieve policy objectives.

Brinkerhoff & Crosby identify a lack of policy coordination as a significant cause of policy implementation problems. According to them, to say that a policy or program is uncoordinated means in a general sense that its elements are somehow incongruent; that they do not interact smoothly to produce desired results; and that the connections among them creates excessive friction or conflict. They reason that one way to think about policy coordination is in terms of three types of activities: information-sharing, resource-sharing and joint action (Honadle & Cooper in Brinkerhoff & Crosby, 2002: 119).

(i) Information-sharing

Information-sharing essentially involves communication, one agency or subunit letting another or others know what it is doing. This can be done through distributing written reports, public hearings, holding meeting of various sorts, or setting up information units. Information-sharing can also take place through the media or on the Internet.

(ii) Resource-sharing

Resource-sharing means that resources controlled by one organisation or group are allocated to another purposes. Resources can also be in form of public support for a policy, so here resource sharing involves actors creating legitimacy and lending status and credibility in the service of reform. This relates to the implementation tasks of legitimization and constituency building. It can include knowledge, motivation and commitment, capacity to mobilize others for or against change and so on. All of these constitute “currencies” that actors can spend or withhold (Cohen & Bradford in Brinkerhoff & Crosby, 2002: 119). They state that by recognising the full range of resources at their command, actors frequently find that they play a stronger role in policy implementation than the first glance might reveal.

(iii) Joint action

Alter & Hage (cited in Brinkerhoff & Crosby, 2002: 119) states that joint-action entails two or more entities collaboratively undertaking some activity together, either sequentially, reciprocally, or simultaneously. Joint activities could include planning, data gathering, service delivery, monitoring, training and/or supervision. Each of these types of coordination implies greater or lesser degrees of linkage among the organisation involved.

This section has shown that government rarely implements policy alone, government implements policy with or through other agencies, organisations within and outside of government. This then creates interdependencies. These interdependencies create requirements for coordinated action in order to achieve policy objectives. This is fundamentally important in the context of cooperative governance and intergovernmental relations. This also requires that policy needs to be communicated.

2.6 POLICY COMMUNICATION

Communication may be defined as any process decisional premises are transmitted from one member of an organisation to another (Simon, 1997: 208). It is obvious that without communication there can be no organisation, for the possibility then of the group influencing the behavior of the individual. Not only is communication absolutely essential to organisation but the availability of particular techniques of communication will in large part determine the way which decision-making can and should be distributed throughout the organisation (Simon, 1997: 208). This illustrates the importance of communication and the importance to communicate policy decisions within the organisation. It is even more important in an inter-governmental context or environment that communication and the communication of policy decisions happen.

Communication in organisations is a two-way process: it comprehends both the transmittal to a decision centre (i.e an individual vested with responsibility for making particular decisions) of orders, information, and advice; and the transmittal of the decisions reached from this centre to other parts of the organisation. Moreover, Simon argues, it is a process that takes upward, downward and laterally throughout the organisation. The information and orders that flow downward through the formal channels of authority and information that flows upward through these same channels are only a small part of the total network of communication in any actual organisation (Simon, 1997: 209).

Simon (1997: 248) argues that the major problems of organisation today are not problems of departmentalisation and coordination of operating units. Instead, they are problems of organising information storage and information processing, not division of labour but factorisation of decision-making. These organisational problems, Simon elucidates, are best attacked at least to a first approximation by examining the information system and the system of decisions it supports an abstraction from agency and department structure. Good communication is conducive to good relations not only between management and employees and within groups, but also ultimately between the organization and its environment. It results in greater work satisfaction and higher productivity. A considerable amount of a leader's time is devoted to communication, and without this the management process could not be carried out (Cronje et al., 1995:125).

In a cooperative governance context, policy needs to be communicated so that all spheres of government know and understand what policy is being pursued and implemented by government. This implies that intergovernmental relations could work better if all spheres of government and sectors involved in the implementation of government policy communicate not only to each other but to intended beneficiaries of the policy about what the policy seeks to achieve, by when and how it will be achieved.

2.7 CONCLUSION

In conclusion, this chapter has shown that governance refers to a set of institutions and actors that are drawn from but also beyond government, identifies the blurring of boundaries and responsibilities for tackling social and economic problems and it also identifies the power of dependence involved in relationships between institutions involved in collective action (Stocker, 1998). It has also shown that intergovernmental relations are between central, provincial, and local governments that facilitate the attainment of common goals through cooperation (Opeskin, 1998: 11). Intergovernmental relations encompass all the complex and interdependent relations among various spheres of government as well as the coordination of public policies (including policies on sustainable development) among national, provincial and local governments through programme reporting requirements, grants-in-aid, the planning and budgetary process and informal communication among officials (Fox & Miller, 1995, 66). Furthermore, Ile (2010: 53) noted that the aim of intergovernmental relations is to enable governmental activities (primarily service delivery), through synergy, efficiency and effectiveness in delivering services, to sustain democracy and strengthen delivery capacity across all spheres of government for the common good. This chapter has argued that the analysis of cooperative governance and intergovernmental relations should also be about how organisations and spheres of government are structured with specific reference to policy-making, policy coordination, policy communication and policy implementation.

CHAPTER THREE: INTERGOVERNMENTAL RELATIONS AND COOPERATIVE GOVERNANCE IN POST-APARTHEID SOUTH AFRICA

3.1 INTRODUCTION

This chapter provides a background on intergovernmental relations and cooperative governance in post-apartheid South Africa. It also establishes historical developments in the establishment of South Africa's legislative and policy framework for intergovernmental relations and cooperative governance. The chapter focuses also considers some arguments that claim that intergovernmental relations and cooperative governance are integral to governance and service delivery.

3.2 GOVERNANCE IN SOUTH AFRICA

Following South Africa's first democratic elections in 1994, there was considerable debate within South Africa about whether the new Constitution and principles binding the proposed Constitutional Assembly should create a federal or unitary system of government. According to Watts (1994:75) one of the most notable features of the discussions leading up to the adoption of the new Constitution were ongoing disputes over terms such as 'federal', 'unitary', 'confederal' systems, 'regions', 'states', 'provinces', 'centralisation', and 'decentralisation'. Klug (1993) argues that the political diversity of South Africa's pluralistic society made discussions on centralisation versus decentralisation complex and a highly sensitive topic. Simeon & Murray (2001: 65-66) argue that whether or not a democratic South Africa was to be a federal South Africa was deeply contested throughout the transition and the negotiation of the new Constitution. Furthermore, Simeon & Murray (2001) state that one of the most contested issues during the negotiation period was about the nature of the relationship between central government and the regions, whether these should be organized in a unitary or a federal system of government.

In fact, the configuration of a post-apartheid State was one of the key policy issues during South Africa's negotiations period (1990-1994) following the unbanning of the national liberation

movements (Mdliva, 2012: 2). The 1909 Act of the British Parliament that created the Union of South Africa established a partially federal regime, but it was significant only for white citizens. Under the full-blown apartheid regime after 1948, power was increasingly concentrated in an all-powerful central state. The four traditional provinces remained in existence, but were little more than administrative units of the central government. In addition, the apartheid regime established the Bantustans, made up of four independent states and six self-governing territories. Simeon & Murray (2001: 68) argue that these were constituted on tribal lines, and were justified in part by appeals to federal and confederal values.

The preoccupation with disputes over such terms as ‘federal’, ‘unitary’, ‘confederal’ systems, ‘regions’, ‘states’, ‘provinces’, ‘centralisation’ and ‘decentralisation’ to which Watts referred to were noticeable with the divergent views held by major political players and organisations during the negotiation and transition to democracy. The National Party (NP) was the chief advocate of a federalist regime. This stemmed partly from its fear of an ANC led majority government. The NP argued that federalism would be an important check on the power of the majority, in an American-inspired system of checks and balances under a liberal constitution. Some Afrikaners, indeed, aimed to create a *Volkstaat* an independent homeland where Afrikaners could reside on the principle of self-determination (Lynch, 1989: 232).

Among black Africans, the demand for federalism came mainly from Chief Mangosuthu Buthelezi, then leader of the Inkatha Freedom Party (IFP). He represented the Zulu people, and demanded a highly autonomous KwaZulu-Natal, with the right of self-determination-confederalism or "extreme federalism. Lynch (1987: 232-233) refers to a meeting of various organizations in what became known as the Indaba, organised with strong support by Chief Buthelezi. The Indaba was aimed at having the Zululand region take over some functions now held by the central government. The negotiators vision was of organizing South Africa into a federation of autonomous provinces. This determination, in the face of an equally firm commitment to decentralisation by the government of South Africa's ruling National Party, made the existence and progress of the Indaba an important matter for supporters of federalism. It is argued that South

Africa's federalists reflected the hope that combining the segregated authorities will stimulate the growth and importance of nonracial associations and groups, and that these groups “will combine and rearrange themselves along the lines of political interests rather than on the basis of race as an official categorization” (Lynch, 1987). According to Cameron (1996: 20) stated that the Interim Constitution of 1993 “showed many of the features of federalism, such as a Senate representing provincial interests, a schedule of provincial powers and a constitutional court as the final arbitrator of intergovernmental conflict”.

The national liberation movements, largely comprised of the African National Congress (ANC), advocated a unitary State which they argued would be able to effect the transformation of society after three centuries of racial discrimination and domination. A federal state, which the NP and IFP proposed, would produce a weak central government while protecting regional interests. The eventual compromises reached in the negotiation period and codified in the Interim Constitution of 1993 and were later consolidated in the Constitution of the Republic of South Africa, 1996 were:

- The establishment of a decentralised state with a strong central government;
- The establishment of the national executive, along with nine provinces, each with elected legislatures and jurisdiction over a number of functional areas;
- Elected local government, with limited autonomy on local service delivery matters;
- National government tasked with supervising provinces and local governments, who were to exercise their authority within a national framework; and
- A fiscal framework aimed at eradicating regional disputes with strong central government oversight (Mdilwa, 2012: 3).

Mdilwa (2012: 2) argues that before 1994, fragmented administrations in the apartheid government were designed to spend public resources and deliver services along racial lines. The arrangement of intergovernmental relationships during this era was purely top-down. Despite the division of central, regional and local levels of government, power was mainly the realm of the central government. Levy & Tapscott (2001: 3-4) concluded that “in the closing stages of the apartheid era, intergovernmental relations were characterised by autocratic central rule, increasing

administrative inefficiency, growing corruption and minimal popular legitimacy. The provincial legislatures lacked any significant law making function and generally served to rubber-stamp legislation from the central executive. Local authorities had no original powers“. Since local government therefore had little power, it was seen as a service provider rather than a level of government (Levy & Tapscott, 2001: 4), and did not share equal status of national and provincial government.

The dismantling of apartheid, and subsequently transition to democracy as well as the transformation process in South Africa brought fundamental changes to the form and function of the State. Before 1994, South Africa’s administration was fragmented, with its citizens divided geographically by population groups, with only a small minority of residents benefiting from development. 20 years after democracy, South Africa has a national government, nine provincial governments and 284 municipalities. In particular, it has entailed a country-wide transformation of intergovernmental relations and introduced a system of co-operative governance. Responsibilities, functions and powers of the three spheres of government (national, provincial and local) have been determined and provided for in a Constitution, the Constitution of the Republic of South Africa (Act 108 of, 1996). The system of intergovernmental relations delineated in the Constitution differs significantly from that of the previous dispensation, particularly in its determinations to heal the divisions of the past, create a democratic, non-racist and non-sexist society and to improve service delivery to all South Africans.

The Constitution actively promotes cooperative governance and effective intergovernmental relations between different levels of government. Sokhela (2005:62) argues that one may regard the inclusion of the concept of cooperative governance in the South African Constitution as historical and a fundamental defining characteristic of our regime. South Africa is essentially a unitary state, however unique – the outcome of long and sometimes heated negotiations was by so doing, it created a legislative framework for intergovernmental relations that prescribe cooperative governance among South Africa’s three spheres of government.

The next section provides a more detailed analysis of the legislative framework for intergovernmental relations and cooperative governance as provided for in the Constitution and other policy documents.

3.3 THE LEGISLATIVE FRAMEWORK FOR INTERGOVERNMENTAL RELATIONS AND COOPERATIVE IN SOUTH AFRICA

The Constitution is sovereign and from it flows a number of government acts and policies setting up the legislative framework to give effect to constitutional principles. This section will highlight the sections in the Constitution that pertain to intergovernmental relations and cooperative governance. The democratic government of South Africa has, over the past twenty years, created a constitutional and institutional framework to encourage co-operation and interaction between the three spheres of government. An extensive policy framework has been established that prescribes intergovernmental relations in South Africa.

Chapter 3 of the Constitution establishes the principles of the structures and nature of the system of governance in South Africa. These principles pertain to the principles of cooperative governance and intergovernmental relations. These key principles are set out in Section 40(1) (2) and Section (41) of the Constitution. It stipulates that

40(1) In the Republic, government is constituted as the national, provincial and local spheres of government, which are distinct, interdependent and interrelated.

40(2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.

41(1) All spheres of government and all organs of state within each sphere must -

- a. preserve the peace, national unity and the indivisibility of the Republic;
- b. secure the well-being of the people of the Republic;

- c. provide effective, transparent, accountable and coherent government for the Republic as a whole;
- d. be loyal to the Constitution, the Republic and its people;
- e. respect the constitutional status, institutions, powers and functions of government in the other spheres;
- f. not assume any power or function except those conferred on them in terms of the Constitution;
- g. exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- h. co-operate with one another in mutual trust and good faith by –
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.

According to South African Government's Draft Green Paper on Cooperative Governance, it refers cooperative governance both to the relationships in government, and to the relationships between government and civil society. It states that the government must therefore promote the strategic interface between the three spheres of government, but also address the relationship between government and civil society at national, provincial and local levels. If this is done effectively, cooperative governance will contribute to improving state capacity in partnership with social society to deliver on national developmental priorities. It also states that cooperative governance is hinged on the word cooperation; in this context, cooperation involves sharing of goals towards the sharing of information, joint planning and budgeting and co-operation with regard to policy development and implementation (2010: 6).

Furthermore, the Draft Green paper states that one important element of cooperative governance is co-ordination. Coordination involves harmonisation of actions, efforts flowing from a shared purpose or vision. This could be achieved through, amongst others, legislation and legislative mandates of different spheres of government and departments, co-ordination of functions or roles within a clear spatial development framework and alignment of budgets, human resources and performance management indicators to efficiently identify and meet priority development goals. Cooperative governance is an integral part of the practice of good governance (2010: 7).

The roles, functions and objectives of the three spheres of government are dealt with in respective chapters of the constitution. Chapter 6 of the constitution provides for provinces; chapter 7 for local government, whereas national government is detailed in chapter 4 and 5. These will be briefly summarized below

3.2.1 National Government

The Constitution established a national government comprising of Parliament (Chapter 4) and a National Executive (Chapter 5). The national government is exclusively responsible for national defence, foreign affairs, the criminal justice system (safety and security, courts), higher education, water and energy resources and administrative functions such as home affairs and tax collection. The bulk of social services are shared competencies between the national and provincial governments. They include school education, health services, social security and welfare services, housing and agriculture. In these areas the national government is responsible for policy formulation, determining regulatory frameworks including setting norms and standards, and overseeing the implementation of these functions. The national government has executive authority, which is vested in the President.

3.3.2 Provincial Government

The Constitution provides for the powers and authority of South Africa's nine provinces each comprising of a provincial legislature and a provincial executive. A province's executive authority is exercised by the Premier together with other Members of the Executive Council (MEC). The provinces function is largely that of policy implementation within the national policy framework. The legislative provincial authority is vested in the provincial legislatures. The authority of the provincial legislature is only applicable in the specific territory of each province (Botes, et al., 1996: 189-190). There are a limited number of exclusive provincial functions including the granting of liquor licenses, provincial roads, ambulance services and provincial planning. Although provinces are "distinctive", they exercise their powers and perform their functions within the regulatory framework set by the national government which is also responsible for monitoring compliance with that framework and, if need be, intervening when constitutional or statutory obligations are not fulfilled.

3.3.3 Local Government

The Constitution is sovereign and from it flows a number of local government acts or legislation and policies setting up the legislative framework for local government. This policy framework provides for local autonomous governance, cooperative governance, as well as avenues for public participation. Municipalities are responsible for the provision of basic services, such as water, electricity, refuse-removal, and municipal infrastructure

Section 151 establishes local government

151(1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.

(2) The executive and legislative authority of a municipality is vested in its Municipal Council.

(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution,

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Section 152(1) of the Constitution outlines the objectives of local government and these objectives are-

- 152(1) (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment;
- (e) and to encourage the involvement of communities and community organisations in the matters of local government.

Furthermore Section 152. (2) states that “A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection 151(1)”. There are three types of municipalities in South Africa, namely Category A, Category B and Category C. South Africa is organized into 284 municipalities.

- Category A or Metropolitan Municipalities are 6 in number and involve the largest cities (Johannesburg, Pretoria, Cape Town, Durban, East Rand and Port Elizabeth). This category has exclusive municipal executive and legislative authority in its jurisdictional area, unlike Categories B or C.
- Category B or Local Municipalities (their number is 231). This category shares its authority with the district municipality within whose area it falls.

- Category C or District Municipalities (their number is 47). A district municipality is made up of a group of Category B municipalities. Its main areas of competence include town planning and capacity-building (Municipal Demarcation Board, 2000)

3.4 POLICIES EMANATING FROM THE CONSTITUTION

There are a multitude of policies that impact on intergovernmental relations and cooperative governance in one way or another. Table 3.1 below identifies some of these policies and briefly summarises the relevance it has for intergovernmental relations and cooperative governance.

Table 3.1: Policy environment for intergovernmental relations¹

| Policy | Intergovernmental relations Implications |
|---|---|
| The White Paper on Reconstruction and Development, 1994 | Stipulated the importance of a participatory local government system to encourage provincial-local intergovernmental relations. |
| The Development Facilitation Act 67 of 1995 | Provides a basis for a coherent framework for land development according to a set of binding principles - promotion of intergovernmental relations among all spheres of government and stakeholders in the process of land development. |
| The Auditor-General Act 12 of 1995; The South African Qualifications Framework; Housing Act 107 of 1997; The National Water Services Act 108 of 1997; The Rural Development Strategy, The White Paper on Transforming Public Service Delivery, 1997; The National Environmental Management Act 107 of 1998; The Skills Development Act 97 | All encompass the principles of co-operation, integration and the promotion of governmental relations pertaining to development, planning and service delivery issues. |

¹ Adapted from Thornhill, C., M. J. Odendaal, L. Malan, F. H. Smith, H. G. van Dijk, N. Holtzhausen, M. Crous, and D. M. Mello 2003, 13-20.

| | |
|--|--|
| of 1998; The White Paper on Municipal Service Partnerships, 2000, among others | |
| The Intergovernmental Fiscal Relations Act 97 of 1997 | Sets out the process for the division of nationally raised revenues between the three spheres of government. It establishes the Budget Forum, in which local government issues are discussed as part of the national budget process. It also requires that a Division of Revenue Bill is tabled annually, setting out (among other things) the amounts to be transferred to each sphere of government. |
| The Organised Local Government Act 52 of 1997 | Formalises the relationship between provinces and municipalities. Reiterates the significance of monitoring, supervision and intervention municipalities where help is needed. |
| The Financial Fiscal Commission Act 99 of 1997 | Provides for the establishment and determination of fiscal intergovernmental relations among the three spheres of government. |
| The Division of Revenue Act for each financial year | Provides for the equitable division of funds to all three spheres of government - promotes transparency during the budget allocation process. |
| The White Paper on Local Government, 1998 | Encourages provincial governments to support the promotion and maintenance of intergovernmental relations. |
| The Municipal Demarcation Act 27 of 1998; The Local Government Municipal Structures Act 117 of 1998 and The Municipal Systems Act 32 of 2000 | Formalises of the various roles of provincial governments in terms of provincial-local intergovernmental relations. |
| The Municipal Finance Management Act 56 of 2003 and The Public Finance Management Act 1 of 1999 | Modernises the financial management system and ensures accountability. Define the relationship between spheres of government in terms of local government financial management as well as the supervisory and monitoring roles of provincial governments. |
| The Intergovernmental Relations Framework Act 13 of 2005 | This Act provides a framework for the establishment of intergovernmental forums and mechanisms to facilitate the settlement of intergovernmental disputes. It seeks to provide |

| | |
|--|--|
| | focus, clarity and certainty regarding core aspects of intergovernmental relations at the executive level of government. Provides for the establishment of intergovernmental structures (President's Coordinating Council, National intergovernmental forums, provincial intergovernmental forums, municipal intergovernmental forums) as well as the conduct of intergovernmental relations and the resolution of intergovernmental relations disputes. |
|--|--|

3.5 THE INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT 13 OF 2005

The key policy document regarding intergovernmental relations and cooperative governance in South Africa is the Intergovernmental Relations Framework Act 13 of 2005, which was promulgated on 15 August 2005. The Act provides institutional framework for the three spheres of government to facilitate coherent government, effective provision of services, monitoring the implementation of policy and legislation, and realization of developmental goals of government as a whole. All spheres of government must provide effective, efficient, transparent, accountable and coherent government in order to ensure the progressive realization of constitutional rights. One of the most pervasive challenges facing the country as a developmental state is the need for government to redress poverty, underdevelopment, marginalization of people and communities and other legacies of apartheid and discrimination. The Act contends that such challenge can only be addressed through a concerted effort by government in each sphere to work together and integrate as far as possible their actions in the provision of service, alleviation of poverty and development of the communities. Co-operation and integration of actions in government depends on a stable and effective system of intergovernmental relations, one in which each of the spheres respect the relative autonomy of the other whilst appreciating the interrelatedness and interdependence of the three spheres.

Section 4 of the Intergovernmental Relations Framework Act states that the objective of the Act is to provide (within the principle of co-operative government set out in Chapter 3 of the Constitution) a framework for the national government, provincial governments and local governments, and all organs of state within those governments, to facilitate co-ordination in the implementation of policy and legislation, including—

- a. coherent government;
- b. effective provision of services;
- c. monitoring implementation of policy and legislation; and
- d. realisation of national priorities.

The intergovernmental system depends on well-coordinated policy, planning, budgeting, implementation and reporting. This is necessary both within spheres and between spheres and is effected through technical, executive and legislative consultative forums.

- Section 6, 7 and 8 provides for the President’s Coordinating Council: This is chaired by the President and comprises the nine provincial premiers, the chairperson of SALGA, the mayors of the metros and the national ministers responsible for cross-cutting functions such as provincial and local government affairs, public service and administration, and finance. Other national ministers may be invited to participate.
- Section 9 provides for the establishment of national intergovernmental forum otherwise known as MinMec in the functional area for which that Cabinet member is responsible. These are sectoral policy forums made up of the national ministers responsible for concurrent functions and their provincial counterparts. SALGA represents local government on a number of these forums.
- Section 13 provides for the Budget Council and Budget Forum: These are established under the Intergovernmental Fiscal Relations Act (1997). The Budget Council consists of the Minister of Finance and the members of the executive council (MECs) responsible for

finance in each of the provinces. The national and provincial spheres consult on any fiscal, budgetary or financial matters affecting provinces as well as any legislation that has financial implications for provinces. The Budget Forum consists of the members of the Budget Council plus representatives of SALGA. It provides a forum for discussing financial matters relating to the local government fiscal framework.

According to 2011 Local Government Budgets and Expenditure Review, the Intergovernmental Relations Act the following key elements and principles underpin the intergovernmental system:

- *Accountability*: Each sphere has specific constitutionally defined powers and responsibilities. It is accountable to its legislature or council, and is empowered to set its own priorities. The power of national government to intervene in provincial and local government matters, and provincial governments to intervene in local government matters, depends on whether the relevant sphere fails to carry out an executive obligation.
- *Transparency and good governance*: Accountability of political representatives to the electorate and transparent reporting arrangements within and between spheres is at the heart of the intergovernmental system. While political executives are responsible for policy and outcomes, the accounting officers are responsible for implementation and outputs.
- *Mutual support*: National and provincial governments have a duty to strengthen the capacity of municipalities. Spheres of government must also act cooperatively towards each other, for instance through avoiding legal action until all other mechanisms have been exhausted.
- *Redistribution*: The three spheres all have important roles to play in redistribution, but because inequalities exist across the country, the redistribution of resources is primarily a national function. Where provinces and municipalities undertake redistribution, the challenge is to do this in line with their fiscal capacity and not to undermine economic activity and their financial viability. Redistribution among the three spheres is achieved

through the vertical division of revenue. Redistribution among provinces and municipalities is effected through their respective equitable share formulae.

- *Broadened access to services:* The Constitution and current government policy prioritises broadening access to services. The responsible spheres are expected to design appropriate levels of service to meet customer needs in an affordable manner, explore innovative and efficient modes of delivery, and leverage public and private resources to fund infrastructure.
- *Responsibility over budgets:* Each sphere of government has the right to determine its own budget and the responsibility to comply with it. To reduce moral hazard and ensure fairness, national government will not bail out provinces or municipalities that mismanage their funds, nor provide guarantees for loans (National Treasury, 2012).

According to Layman (2008: 8) one salient feature of the constitutional dispensation is the injunction that spheres of government exercise their powers and perform their functions in a spirit of cooperative governance rather than competitive federalism. As said by Ile (2010: 53) an intergovernmental relation system therefore, consists of facilitative systems and relationships that enable the units of government to participate effectively and carry out mandates so that governmental goals are achieved. This includes executive mechanisms, coordinating mechanisms, cooperative agreements, judiciary and legislative mechanisms that all facilitate delivery by government machinery. Intergovernmental relations can thus be defined as the “glue” that holds them together. In other words, it is the interactions, relationships and the conduct of officials between governmental activities. It seeks the achievement of common goals through mutual relationships between and across vertical and horizontal governmental arrangements, alignment and cohesion across all spheres of government. The aim of intergovernmental relations therefore, is to enable governmental activities (primarily service delivery), through synergy, efficiency and effectiveness in delivering services, to sustain democracy and strengthen delivery capacity across all spheres of government for the common good.

Venter (1999: 171-202) argues that each sphere of government in South Africa is autonomous but interlocked with the other spheres and must operate in unison with them in the delivery of public services. Each sphere is distinctive from the others and although they are interdependent and interrelated, each has relative autonomy to perform its functions and exercise its powers. This implies some level of parity between and amongst the spheres, as they are equal with regard to their importance in service delivery. Each sphere has the responsibility of ensuring that the other spheres perform their functions adequately and constitutionally, the national sphere to the provincial and the provincial to local sphere. Levy & Tapscott (2001: 5) argue that “the decision to describe the different levels of government as spheres rather than tiers was a conscious attempt to move away from the notion of a hierarchy with all the connotations of subordination”. Ile (2010:54) argues that the aim was to seek cooperation rather than competition and that this will ensure that spheres commit to assigned roles, although critics may argue that excessive emphasis on harmony and cooperation can mean intergovernmental agreements that are the lowest common denominator, or that are too weak to be effective.

A number of studies have identified certain limitations to the implementation of cooperative governance and intergovernmental relations in South Africa. Notwithstanding the aspiring objectives of cooperative government but more often, a policy is set at national level and budgeting and policy implementation is carried out by sub-national governments through the assigned functional frameworks as set out in Schedules 4 and 5 of the Constitution. More often than not this then presents complexities and challenges in the management and implementation of concurrent functions. According to an initial study commissioned by the Presidency on the State of Intergovernmental Relations in South Africa, Layman argues that, in concurrent functions there tends to be considerable overlapping of roles and responsibilities between national and provincial responsibilities within a particular sector such as health, transport or education. These concurrent functions and roles create policy tensions between the spheres which may create a fertile terrain for intergovernmental contestation and disputes. Furthermore, Layman (2005) argues that the complexity of concurrent functions tends to blur lines of accountability and that managing the structural tensions inherent in concurrency and aspirations to cooperative government lies at the heart of the evolution of South Africa’s intergovernmental system.

Malan (2005) identifies two major challenges with regard to intergovernmental relations. Malan (2005: 241) argues that in reality, the intergovernmental relations system shows that it is hampered by two main deficiencies:

1. The determination and execution of key national development priorities involving all three spheres of government is an unpredictable and incoherent process at most (if not all) spheres of government, with the clear exception of the budget process. A variety of processes and structures exist whose status, role and interrelationships remain uncertain.
2. The management of service delivery programmes is based on questions of jurisdiction between departments, organs of state or spheres of government when policy priorities cut across ministerial mandates and traditional policy fields. The mechanisms for managing service delivery through intergovernmental relations are ad hoc and lack institutional definition. The result is a poor integration of services at community level, duplication, real or perceived unfunded mandates, and a general inability to forge collaborative partnerships or to find common ground for joint action.

Malan concludes that it is important that the devolution of functions to provincial and local governments should be in line with their capacity to implement these functions in order to prevent unfunded mandates being devolved to provincial and local government. It is necessary that national government not only has a policy on the intervention of national government, but also on the resumption of functions delegated to the other spheres.

3.5 LOCAL GOVERNMENT & INTERGOVERNMENTAL RELATIONS

The system of local government is brought into the spotlight as the Constitution of South Africa calls upon local government to take responsibility for addressing years of service delivery backlogs created by apartheid. Section 152(1) of the Constitution outlines the legislative obligations of local government which are arduous: it must be effective, efficient and responsive in carrying out its constitutionally mandated functions. It must organise its administration to manage, plan and finance its undertakings. Local government has to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a

sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in matters of local government (Constitution of the Republic of South Africa, 1996)

According to the literature on local government, local government is deemed important because it fosters accountability and responsiveness on government representatives at local levels. Ile (2010: 530) states that local government is made up of municipalities that are closest to communities and that the local government sphere has to recognize legislation passed by the other two spheres. It is this relationship of regulation and supervision that defines how the three spheres are "interrelated"; provinces and municipalities exercise their distinctive powers within imposed frameworks and under supervision. Within the regulatory frameworks and subject to supervision, provinces and municipalities enjoy relative autonomy, remaining accountable to their constituencies to reflect their policy preferences. However, they must still exercise their powers to the common good of the country as a whole by cooperating with the other spheres. In this sense the spheres are "interdependent"; only collectively and in cooperation with one another can they provide government that meets the needs of the country as whole.

The White Paper on Local Government (1998: 39-40) outlines various constitutional roles and responsibilities of national and provincial government, toward local government. It states that the national government has roles and responsibilities including a strategic role, a co-ordination role, providing a legislative framework, capacity building for local government, management of fiscal and financial matters, monitoring and oversight. With respect to the national government's provision of the legislative framework, the White Paper on Local Government (1998: 39-40) states that the national government's role is to provide a framework for intergovernmental relations, including the structures, procedures and mechanisms to promote and facilitate positive intergovernmental relations and the resolution of disputes within and between spheres of government. It also refers national government's responsibility to manage the system of intergovernmental fiscal relations, situating local government's fiscal powers within the national tax structure and passing legislation to determine local government's equitable share.

With regards to the provincial government's role and responsibility towards local government, the White Paper on Local Government (1998: 41) states that these roles and responsibilities include a strategic role, a development role, an intergovernmental role, a regulatory role and a fiscal role. With respect to its intergovernmental relations role, the provincial government should establish forums and processes for the purpose of including local government in decision-making processes that affect it and also promote horizontal co-operation and co-ordination between municipalities in the province.

Local government shares with provincial and national government the responsibility to *respect*, *protect* and *promote* all the fundamental rights of the Bill of Rights, including the economic, social and cultural rights. This is the consequence of the elevation of local government from an administrative arm of central and provincial government to a component of the government proper (Mastenbroek & Steyler 1998: 245). De Visser (2009: 203) states that local authorities are obliged, just as much as national and provincial governments, to refrain from interfering with these rights, to protect against their violation by third parties and to advance their realisation. However, when it comes to fulfilling an economic, social or cultural right in terms of taking legislative, administrative, budgetary, judicial or other similar measures, local government's hands might be tied by the mandate it has received from the Constitution.

Levy & Tapscott (2001:2) are of the opinion that the transformation process brought many challenges for South Africa. The 2011 Local Government Budgets and Expenditure Review (2011:29) also concedes that South Africa's system of intergovernmental relations is complex and continues to evolve as better modes of cooperation and coordination emerge and as functions are shifted between the spheres. In reality, one of these challenges was co-operative government. Policy and legislative issues must support the principles of co-operative government. Establishing co-operative government is a process that is very complex in the first place, requires a technical balance for interaction between the structures of the government in the second place and implies clarity regarding political power relations in the third place; hence the introduction of the

Intergovernmental Relations Framework Act, 2005. Sokhela (2005: 64) argues that intergovernmental relations among the various governmental bodies occur at horizontal and vertical levels and that the manner in which these governmental bodies conduct their relations will have an impact on the delivery of services to the communities and it is therefore critical that these governmental bodies conduct themselves with the framework of the Constitution. Sokhela concludes by stating that “if these governmental bodies do not conduct themselves within the spirit of the Constitution, such behavior would inevitably impact negatively on the welfare of citizens and the delivery of services to communities”.

3.6 CONCLUSION

This chapter has provided a background on cooperative governance and intergovernmental relations in post-apartheid South Africa. It also provided a background on some of the debates during the negotiations period where decisions were being made whether South Africa was to become a federal or unitary state. From the above discussion it can be argued that South Africa is a unitary state with features of a federal state, such as provincial governments empowered by the South African Constitution to adopt 9 provincial Constitutions, and enact laws at the provincial level as well as local government with its own set of autonomy, roles and responsibilities. This debate, however still contested in the governance of South Africa especially insofar as cooperative governance and intergovernmental relations are concerned.

This chapter established the legislative and policy frameworks for cooperative governance and intergovernmental relations. The legislative framework for intergovernmental relations in South Africa provides for each sphere of government to be autonomous but interlocked with the other spheres and must operate in unison with them in the delivery of public services. Each sphere is distinctive from the others and although they are interdependent and interrelated, each has relative autonomy to perform its functions and exercise its powers. The chapter has focused on the arguments that claim that cooperative governance and intergovernmental relations are integral to better governance and service delivery. Despite having a system of cooperative governance and

intergovernmental relations in South Africa, there are limitations as provinces and municipalities struggle to establish and consolidate entirely new political institutions and processes.

The next chapter will explore and analyse both policy and legislative framework with respect to housing in South Africa, and it will identify some of the ongoing intergovernmental relations and cooperative governance challenges.

CHAPTER FOUR: INTERGOVERNMENTAL RELATIONS AND COOPERATIVE GOVERNANCE IN THE PROVISION OF HOUSING

4.1 INTRODUCTION

This chapter explores the legislative framework for the provision of housing in South Africa in order to consider and reflect on specific issues of intergovernmental relations and cooperative governance. It examines the inherent implications for intergovernmental relations and cooperative governance when three spheres of government are tasked with a service delivery function which impacts on all three spheres of government, such as the right to adequate housing. The chapter presents a few examples that illustrate that municipalities seem to encounter common challenges pertaining to intergovernmental relations and cooperative governance. This has led to severe policy implementation challenges, with municipalities facing the brunt of service delivery protests.

According to NGO Pulse (2012) housing and the provision of housing in South Africa is characterized by both achievements and challenges. After the demise of apartheid, South Africa's newly elected democratic government inherited substantial services backlogs with respect to access to adequate housing or human settlements. During 2014 budget vote, the Minister of Human Settlements, Ms Lindiwe Sisulu stated that “We have also come to learn that the housing backlog is currently 2.3 million families and growing. We have come to understand as a fact for us in developing countries, that urbanization is upon us and that we have to accept and prepare for it” (2014: 4). While urbanisation has many benefits for a country’s population, it increases the burden on government to provide key social services such as adequate housing and shelter, running water and sanitation.

Statistics South Africa (Stats SA), reported that the number of households living in informal settlements increased from 52.9 percent in 2002 to 54.5 percent in 2012 (NGO Pulse, 2012). As the province accommodating the biggest and fastest growing population in the country, Gauteng is particularly affected by urbanisation, with rates sitting at 96 percent followed by the Western

Cape at 90 percent and KwaZulu-Natal with a level of urbanisation of 45 percent, while South Africa's population grew by 15.5 percent (almost seven million people) in the same time. The increase of people living in informal settlements whilst the South African Institute of Race Relations (SAIRR) reports that the delivery of houses within the same period has dropped drastically across all nine provinces, some reaching lows of a 30% in delivery.

When South Africa became a constitutional democracy in 1994, the country was faced with enormous urban development challenges (Narsiah, 2001). It is clear from above that the providing everyone with access to housing remains a significant service delivery challenge, despite nation-wide progress made in the provision of housing. It is a service delivery challenge which affects all three spheres of government in different yet related ways. This chapter will now present the legislative framework for the provision of housing in more detail.

4.2 THE LEGISLATIVE AND POLICY FRAMEWORK FOR THE PROVISION OF HOUSING IN SOUTH AFRICA

4.2.1 Legislation

(i) The White Paper on Housing

The 1994 White Paper on Housing titled, A New Housing Policy and Strategy for South Africa commits government to the establishment of viable, socially and economically integrated communities situated in areas allowing convenient access to economic opportunities as well as health, educational and social amenities. It also states that all South Africa's people 'will have access to a permanent residential structure with secure tenure, ensuring privacy and providing adequate protection against the elements; potable water; and sanitary facilities including waste disposal, and domestic electricity supply'. According to Khan & Thurman (2001) the 1994 White Paper on Housing emphasised the need to stabilise the environment to transform the extremely fragmented, complex and racially-based financial and institutional framework inherited from the

previous government, whilst simultaneously establishing new systems to ensure delivery to address the housing backlog. Furthermore, Khan & Thurman (2001: 3) argue that one of the key implementation strategies with respect to the provision of housing are partnership between different sectors and spheres of government. They argue that implementation of the housing policy is based upon the concept of public-private-social partnerships. The White Paper calls for the housing challenge to be met through ‘mobilising and harnessing the combined resources, efforts and initiatives of communities, the private, commercial sector and the state’.

(ii) The Constitution

The South African Constitution adopted in 1996 enshrines certain socioeconomic rights, among them the right to adequate housing. Section 26 of the Constitution states that:

(1) Everyone has the right to have access to adequate housing

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

In terms of Part A of Schedule 4 of the Constitution, housing is a concurrent competence of national and provincial government. McLean (2003) argues that this means that both the national and provincial governments are authorised to enact legislation to regulate housing.

(iii) The Housing Act 107 of 1997

The Housing Act 107 of 1997 (hereafter referred to as the Housing Act) provides the national framework for housing, including the roles and responsibilities of the three spheres of government. It stipulates the respective responsibilities of the three spheres of government by elaborating on Schedules 4 and 5 of the Constitution. Further, it provides for the assignment of functions to local government in terms of section 156(1) (b) of the Constitution. According to Du Plessis, this Act “defines the housing development functions of national, provincial and local governments, repeals all racially based housing legislation, expands on the provisions of the Constitution and prescribes

general principles for housing development” (2002). Tonkin (2008) explains the importance behind the allocation of roles as defined in the Act by saying “government functions should be performed at the lowest possible sphere, closest to the people, that is, at local government level”.

Table 4.1 summarises the respective roles of the three spheres of government as stipulated in the Constitution and in the Housing Act 107 of 1997.

| National government | Provincial government | Local government |
|--|---|---|
| <p>National government’s responsibility is to establish and facilitate a sustainable national housing development process. For this purpose, it must determine national housing policy. It is responsible for:</p> <ul style="list-style-type: none"> ▪ Defining and applying the minimum norms and standards for housing ▪ Setting up national subsidy systems and allocating funds to provinces ▪ Engaging in national facilitation programs, monitoring national and provincial performance against the housing delivery goals | <p>Provincial government’s main responsibility is to create an enabling environment, by promoting and facilitating the provision of adequate housing in the province. In addition thereto, provincial government must:</p> <ul style="list-style-type: none"> ▪ Determine provincial policy in respect of housing development ▪ Promote the adoption of legislation to ensure effective housing delivery ▪ Take all reasonable and necessary steps to support and strengthen the capacity of municipalities ▪ Co-ordinate housing development in the province | <p>Every municipality must, as part of integrated development planning, take reasonable and necessary steps within the housing legislation to ensure that:</p> <ul style="list-style-type: none"> ▪ People have access to adequate housing ▪ Unhealthy and unsafe living conditions are prevented ▪ Services such as water, sanitation, electricity, roads, storm-water drainage and transport are provided ▪ Housing delivery goals are determined for areas under its jurisdiction ▪ Land for housing development is identified and designated |

4.2.2 Spheres of Government and the responsibility for the provision of housing

(i) The National Government

The Department of Human Settlements (formerly the Department of Housing) is the government department responsible for housing. Its primary purpose is the implementation of the constitutional mandate that "everyone has the right to have access to adequate housing." It works in cooperation with the provincial governments, each of which has its own Human Settlements department, and with the municipalities. National government's responsibility is to determine national housing policy and to establish and facilitate a sustainable national housing development process. The Housing Act 107 of 1997, section 3(1) states that the National Minister Human Settlements has the overall responsibility for a sustainable national housing development process, in consultation with all the provincial MECs for housing and the national organisations representing municipalities. Furthermore, section 3(2) of the Housing Act states that it is the Minister's task to determine policy, norms and standards in respect of housing development. The Minister must ensure that the national department has delivery goals but must also facilitate provincial and local delivery goals. Apart from monitoring national performance, the Minister must also assist provinces to develop their capacity to facilitate housing development and also support the capacity of municipalities to do the same.

The Housing Act puts the minister responsible for the establishment of the necessary national institutional and funding frameworks and the negotiation of allocations. In this regard, the Housing Act allocates important powers to the Minister, such as the allocation of funds for national housing programmes to provincial governments, including funds for national housing programmes administered by municipalities in terms of section 10 of the Housing Act. He or she can also allocate funds for national facilitative programmes for housing development. The Minister must develop, adopt and publish a National Housing Code, a comprehensive national housing policy that must be used by all three spheres of government." This Code can include administrative or procedural guidelines in respect of the effective implementation and application of national housing policy.

(ii) Provincial Government

The provincial government's main responsibility is to create an enabling environment by promoting and facilitating the provision of adequate housing in the province. The Housing Act 107 of 1997, section 7(1) states that provinces must do everything in their powers to promote and facilitate the provision of adequate housing within the framework of national housing policy. The Act requires provinces to consult with the provincial organisations representing municipalities. There must be a provincial policy in respect of housing development. Provinces must co-ordinate housing development in the province and promote the adoption of their own legislation to ensure effective housing delivery. Provinces are specifically instructed to support and strengthen the capacity of municipalities to perform their duties in respect of housing development effectively. Definitely, when a municipality fails to perform a duty imposed by the Housing Act, provincial government must intervene by using section 139 of the Constitution to ensure its performance.

(iii) Local Government

Local government also referred to as municipalities must, as part of integrated development planning, take reasonable and necessary steps within the housing legislation to ensure that the right of access to adequate housing is realized. The Schedules to the Constitution offer comprehension into the enquiry of which sphere carries the primary obligation for the fulfillment of the right to housing. Schedule 4A lists housing as a concurrent competency of the national and provincial spheres. Schedules 4B and 5B of the Constitution do not confer on local government any function that can be seen to place the onus on it to be the primary responsible organ for the implementation of the right to housing. De Visser (2009) argues that although many of the listed functions and powers relate to housing (building regulations, potable water, sanitation, electricity and waste disposal, for example, clearly relate to housing), they do not place the primary obligation to take the requisite measures for the fulfilment of the right to housing on local government.

Table 4.2 adapted from the Financial and Fiscal Commission Submission for the 2012/13 Division of Revenue – Technical Report provides a summary of the role of each sphere of government in the provision of functions as they relate to housing and highlights the sector-specific legislation that assign these functions.

Table 4.2 The role each sphere of government in the provision of functions

| Function | Relationship to Schedule 4B and 5B | Provinces | Municipalities | Legislation |
|----------|---|---|--|---|
| Housing | Housing appears as a competency in Schedule 4A. However, ‘Housing’ as a competency has not been defined in any statute or court judgment. | Facilitate and promote the provision of adequate housing in the province and within the framework of national policy. | Implement the process of integrated development planning within the framework of national and provincial housing legislation and policy. | The Housing Act, No. 107 of 1997, provides for ‘accreditation’ of municipalities to undertake housing activities. |

Although housing appears as a competency in Schedule 4A, it has not been defined as a competency in any statute or court judgment. The Housing Act, No. 107 of 1997, section 1 defines “housing development” as:

the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and potable water, adequate sanitary facilities and domestic energy supply.

4.3 THE BREAKING NEW GROUND POLICY

The legislative framework has obliged the three spheres of government to put in place policies and programmes to give effect to their respective roles and responsibilities. In 2004 Cabinet approved the national government's Department of Housing's Comprehensive Plan for the Development of Integrated Sustainable Human Settlements, popularly known as Breaking New Ground policy (hereafter referred to as BNG). The BNG states that it determines finances, promotes, communicates and monitors the implementation of housing and sanitation programmes across South Africa. The BNG is a national human settlements plan which underlines the vision of the Department of Housing to promote the achievement of a non-racial, integrated society through the development of sustainable human settlements and quality housing. Within this broader vision, it is stated in the as Breaking New Ground policy that the Department of Human Settlements is committed to meeting the following specific objectives:

- Accelerating the delivery of housing as a key strategy for poverty alleviation;
- Utilising provision of housing as a major job creation strategy;
- Combating crime, promoting social cohesion and improving quality of life for the poor;
- Supporting the functioning of the entire single residential property market to reduce duality within the sector by breaking the barriers between the first economy residential property boom and the second economy slump; and
- Utilising housing as an instrument for the development of sustainable integrated human settlements, in support of spatial restructuring (2004: 9-10).

The adoption of the BNG broadens the focus of the national and provincial departments of human settlements. This approach has been called 'sustainable human settlement' which intends to ensure that houses and other relevant public services (such as land, roads, schools, inter alia) are provided to make life more convenient for the citizens. Tonkin (2008) defines 'integrated development' as "a form of development which is holistic in addressing needs and where different actions support each other and set up positive relationships with each other. In an integrated development approach the development objectives and process is responsive to the needs of – and shape through the direct participation of those who the development is intended to benefit".

As such, the BNG has widespread ramifications – especially for intergovernmental relations and cooperative governances. It highlights numerous policy implications for other departments, some at national, provincial and/or local government level. The provision of housing cannot be undertaken without the cooperation of other departments. For example, land may be administered by the Department of Land Reform and Rural Development, roads by the Department of Transport, clinics by the Department of Health. Even more challenging is the associated provision of basic services such as water, sanitation, electricity and refuse removal which is a burden that will fall on municipalities.

In addition, a number of statutory bodies have been established to assist low-income communities to access funding in order to enter the housing market. Statutory bodies have also been established to regulate developers, estate agents and financial service providers to make sure that low-income communities are not taken advantage of. These are summarized in Table 4.2 below. The Table indicates that the respective statutory bodies fall under the jurisdiction of different government departments, reiterating the argument that regulations pertaining to the provision of housing spans across just the Department of Human Settlements.

Table 4.3 Statutory Bodies in Human Settlements

| Statutory body | Function |
|------------------------------------|--|
| Estate Agency Affairs Board (EAAB) | Established in 1976 in terms of the Estate Agency Affairs Act 112 of 1976 with the mandate to regulate and control certain activities of estate agents in the public interest. The EAAB regulates the estate agency profession through ensuring that all persons carrying out the activities of an estate agent as a service to the public are registered with the EAAB. A Fidelity Fund Certificate, which is to be renewed each year is issued as evidence |

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| | of such registration and confirmation that such person is legally entitled to carry out the activities of an estate agent. The Estate Agency Affairs Board (EAAB), reports to the Minister of Trade and Industry and is located in the Department of Human Settlements (Estate Agency Affairs Act, 1976). |
| National Housing Finance Corporation (NHFC) | Established by the National Department of Human Settlements as a development finance institution (DFI) in 1996, with the principal mandate of broadening and deepening access to affordable housing finance for the low-to-middle income South African households. NHFC makes housing and housing finance accessible and affordable for the low-to-middle income households, the gap housing market (Housing Act, 1997). |
| National Urban Reconstruction and Housing Agency (NURCHA) | Provides bridging finance and construction support services to contractors and developers. NURCHA finances and supports the construction of Subsidy and affordable housing, infrastructure and community facilities. NURCHA also provides account administration, project and programme management services to local and provincial authorities. NURCHA is funded by the South African Government in partnership with the Soros Foundation, various overseas donors and other commercial lenders (Housing Act, 1997). |
| Social Housing Regulatory Authority (SHRA) | Oversees the social housing industry. Social housing is a rental or co-operative housing option, which requires institutionalised management. It is provided by accredited SHIs or in accredited social housing projects in designated restructuring zones. Social housing provides good quality rental accommodation for the upper end of the low income market. The primary objective of urban restructuring is |

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|---|---|
| | creating sustainable human settlements (Housing Act, 1997). |
| National Home Builders Registration Council (NHBRC) | Provides protection in terms of the Housing Consumers Protection Measures Act of 1998 (HCPMA). It is mandated to provide protection for housing consumers and to regulate the home building industry (Housing Consumers Protection Measures Act, 1998). |
| Rural Housing Loan Fund (RHLF) | Enables low income earners to access small loans that they could afford to repay. It is a wholesale development finance (Housing Act, 1997). |
| The Housing Development Agency (HDA) | Established in 2009 in terms of the Housing Development Agency Act No 23 of 2008 as a public development agency whose mission is fast-tracking the acquisition and release of state, private and communally owned land for human settlement developments. The HDA provides project management services for the development of human settlements (Housing Development Agency Act, 2008). |

4.4 LOCAL GOVERNMENT AND THE PROVISION OF HOUSING: CHALLENGES EXPERIENCED

This section will argue that the provision of housing poses unique and burdensome challenges on municipalities. It serves as an example of why good intergovernmental relations and cooperative governance is fundamental in service delivery. It highlights problems, both potential and actual. Despite the legislative and normative emphasis on spheres of government to work cooperatively, reality shows that its implementation is not that straightforward.

It must be stated upfront that local government is not the sphere of government responsible for the provision of housing. In fact, the Constitution calls upon local government to take responsibility for providing predominantly basic services such as water, sanitation, electricity and refuse removal (Schedule 4 of the Constitution). It must be effective, efficient and responsive in carrying out its

constitutionally mandated functions. It must also organise its administration to manage, plan and finance its undertakings (Section 152 of the Constitution). Furthermore, local government has to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in matters of local government (Section 152 of the Constitution). When it comes to housing, local government is only responsible for building regulations, which includes matters of zoning. However, this has been changing steadily over the last couple of years.

This has in large part emerged because of increasing provincial government delegation. This delegation emanates from the Constitution's provision for the principle of subsidiarity. Section 156(4) points out that

The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if –

a. that matter would most effectively be administered locally; and

b. the municipality has the capacity to administer it.

The stipulation above has enabled provinces to delegate administrative responsibilities for the provision of housing to municipalities that are technically able to do so. This has implications for intergovernmental relations and cooperative governance between provincial and local government. Municipalities go through an accreditation process, after which they become responsible for the provision of housing in their jurisdiction. It places increasing emphasis on the role of local government in the provision of housing, and raises questions on the role of provincial government, when local governments become more active in the provision of housing. Pottie (2003) notes that local government must deal with political as well as financial pressures – from 'the sides' as well as from 'above'. "As initiatives to improve administration and financial management are implemented at the local level, political demands for improved services continue. Local

government has continued to assume growing responsibilities for housing and infrastructure development, even as national budgets for housing have declined.”

Sibande (2011: 245) argues that cooperative governance is nonexistent insofar as the planning for the provision of housing is done by the national and provincial governments through the MinMecs responsible for human settlements. There are no local government representatives on these intergovernmental relations bodies, yet decisions that affect municipalities are taken. Mastenbroek & Steytler (1998: 245) argue that local government shares with provincial and national government the responsibility to respect, protect and promote all the fundamental rights of the Bill of Rights, including the economic, social and cultural rights. This is the consequence of the elevation of local government from an administrative arm of central and provincial government to a component of the government proper, however to what extent this is translated into high level decision-making authority remains questionable.

De Visser (2004: 203) states that local authorities are obliged, just as much as national and provincial governments, to refrain from interfering with these rights, to protect against their violation by third parties and to advance their realisation. However, when it comes to fulfilling an economic, social or cultural right in terms of taking legislative, administrative, budgetary, judicial or other similar measures, local government's hands might be tied by the mandate it has received from the Constitution. *Breaking New Ground* (2005:30) refers to the need of adjusting institutional arrangements within government. These institutional arrangements have to do with the powers, roles and functions of different spheres of government. Fundamentally, these institutional arrangements are about intergovernmental relations and cooperative governance.

The national government claims that the role and capacity of municipalities is central in the aligning with interdepartmental and intergovernmental funding streams. According to the National Housing Code (2009:14) accreditation entails a progressive transfer of responsibility in respect of decision-making in the National Housing Programmes and must be accompanied by the progressive transfer of accountability for such decision-making and crucially, the progressive transfer of real authority to perform in that responsibility. The National Housing Code goes on to

say that accreditation follows capacity, in this respect, this is done in order to ensure that delivery is not interrupted or undermined, therefore, accreditation must only be granted on the basis of (existing or created) capacity within the municipality concerned. The Housing Code also states that funding follows function, in this respect, it is important that municipalities have sufficient funding to operate within the new roles for which they become accredited. Sisulu (2005) indicates that selected municipalities would be accredited and more funds will be allocated to such municipalities to carry out service delivery mandates.

The initial targets of municipal accreditation were that all metropolitan municipalities would receive accreditation during 2004 and then 20 more municipalities per annum for a ten year period to accredit all the municipalities in South Africa (Breaking New Ground, 2004). However, with the new arrangements regarding the different levels of accreditation (levels 1- 3) and the approach that initiatives are within respective municipalities has ‘shifted the goal post’ (Housing Code, 2009). This approach will enable municipalities to assume overall responsibility for housing programmes in their areas of jurisdiction, through a greater devolution of responsibility and resources to municipalities. It is assumed that municipalities will proactively take up their housing responsibilities given that clear guidelines and resourcing will be forthcoming from the national sphere. The following interventions are to be undertaken:

The accreditation of municipalities – The new human settlements plan envisages the accreditation of municipalities particularly in the six metropolitan areas, secondary towns and ultimately to all municipalities. A framework is to be established to address various policy, constitutional and legislative aspects in order to enable municipalities to manage the full range of housing instruments within their areas of jurisdiction. In order to be accredited, municipalities will have to demonstrate their capacity to plan, implement, and maintain both projects and programs that are well integrated within Independent Development Plans (IDPs) and within the 3 year rolling capital investment programs mandated by the Municipal Finance Management Act (MFMA). In particular, it is envisaged that municipalities will be required to

- Establish housing units with staff complements adequate to carry out project and program requirements;
- Establish cross-sectoral, Sustainable Human Settlements Planning Committees including senior staff from at least but not limited to the municipal offices for housing, planning, economic development, infrastructure/engineering, MIG PIU, and land reform;
- Submit complete inventories of municipally-owned land including identification of land suitable for low cost housing and justification for exclusion of other municipally owned land;
- Submit a Council resolution indicating the willingness of the municipality to meet DoH anti-corruption, monitoring and reporting requirements as an integral part of the overall performance reporting required under the MFMA.

The National Department of Human Settlement (NDHS) briefed the Public Services Committee on the unification of standards for construction, house sizes, electrification and energy efficient standards. The purpose of the meeting was to present the current status on technical norms and standards for the housing subsidy market, revisions to date, reflect on the Southern Cape Coastal Condensation Area standards, and confirm the current standards of the revision project. If the subsidy houses were to comply with the National Building Regulations (NBR) and one upgraded the electrical installation the total projected cost of the new product was R110 947 as opposed to the current subsidy of R64 6660. Delivering a higher-quality product came at a premium and would limit the number of houses that could be built: 41 244 houses would be lost due to the increased cost of each house.

Concerns from the members included balancing the costs of compliance, escalation, variations, and project management fees, and the number of homes lost associated with these costs. The refusal of MinMecs and several municipalities to accept the new norms and standards was also of great concern. Towards the end of the discussion, a debate about the merits of building houses with sufficient amenities versus more but simpler houses, developed between the ANC and DA.

Below is a summary of some of the concerns raised, and are cited here in order to illustrate some of the tensions in a system that is meant to be promote cooperative governance.

- Mr H Groenewald (DA North West) was concerned that at this stage in South Africa there was a huge backlog of housing to be built and questioned if it was really necessary to supply a house with an additional three electrical connections, and should it really cost R12 000 to put in three additional connections, for such small houses?
- Mr M Jacobs (ANC Free State) would like to know if there were norms and standards for the site itself. In the past people had only been given a very small parcel of land, but even in this era of democratic government, people still only had a very small site. If in the future a person had the resources to expand his home, would they have the space to do so? And was there a plan for municipalities to adhere to the norms and standards? MECs had not adopted these new norms and standards yet, perhaps because there were certain problems with them? He pointed out that the issue of mildew was not only confined to Western Cape, but could be found wherever it was damp, including his constituency in the Eastern Cape.
- Mr R Tau (ANC Northern Cape) was concerned that some municipalities were refusing to accept the adjusted norms and standards. It was unclear as to whether the problem lay in a lack of political expediency or lack of communication and consistency in the executive. He also asked Mr Van der Walt to clarify if the Cabinet had already approved the new norms and standards. The Chairperson Sibande concluded the meeting by suggesting that the department increase its outreach and communication with the various levels of provincial and local governments².

The concerns raised by members of the Public Services Committee above illustrate the day-to-day complexities involved in intergovernmental relations and cooperative governance. There also seems to be a sense that municipalities feel marginalized and powerless in the process: bystanders as opposed to equal partners in a system of intergovernmental relations. In the main, the concerns

² <http://www.pmg.org.za/report/20130611-new-housing-norms-and-standards-provincial-and-local-response-department-human-settlements-briefing>

highlight practical and operational challenges which require ongoing integrated planning and coordination from all three spheres of government.

According to Phago (2013: 3) that the Breaking New Ground (BNG) policy appears as a comprehensive administrative strategy of national government to ensure the acceleration of the provision of housing. The message of this policy includes that the success of the provision of housing will depend on a collaborative approach where all the stakeholders function together as a collective – however, to be implemented under the strong central leadership of the Department of Human Settlements. Furthermore, Phago explains that the development of the National Spatial Development Perspective (NSDP) at the national government sphere is the framework upon which provinces must design their respective Provincial Growth and Development Strategy (PGDS). In turn, the PGDSs inform the municipal Integrated Development Plans (IDPs). Nkoana-Mashabane (2008: 30-31) (then Limpopo MEC for Housing) stated that the provincial administrative activities are also informed by the NSDP and the BNG policy. This assertion is also important to note since the planning approach of government is top-down in nature. This means that the planning systems and budget distribution of the provinces should be aligned with the national government while the municipal plans (IDPs) should be aligned to the provincial planning system (PGDS). Menguele, Khan, & Vawda (2008: 185) The integrated planning, coordination of activities of the three spheres of government calls for this alignment, improvement in planning and investment prioritisation as referenced in the NSDP (: 2008. In short, Menguele et al., described as such, the system of intergovernmental relations is rather centralised and top-down as opposed to one premised on cooperative governance.

The then Minister of Finance, Mr Trevor Manuel during his 2007 address to the National Council of Provinces (NCOP), stated that there are numerous administrative challenges which largely relate to resource allocation in the context of intergovernmental relations. Firstly, the main challenge facing housing intergovernmental cooperation relates to the ability to establish strong linkages between policy making and resource allocation. The linkage in this regard relates to the national

government's provision of policy and financial allocations to provinces and municipalities while they (provinces and municipalities) are expected to ensure that resources are used for the budgeted activities. Secondly, the challenges related to the cooperation between Cabinet, Parliament, National Treasury, National Department of Human Settlements, Provincial Executive Councils and provincial departments of human settlements are also raised. Provincial Executive Councils make provincial resource allocations after the national government structures have undertaken resource distribution process to the provinces in line with the national priorities. The challenge in this regard is the need to ensure that intra- and interprovincial equity is achieved in the provision of housing. Thirdly, the need to align national government policy on housing versus provincial budgets constitutes an important challenge to be considered. In an attempt to address these intergovernmental challenges, the role of Parliament, in particular, the National Council of Provinces is central in overseeing this and ensuring that the interest of the provinces are taken seriously by government departments of human settlements (Manuel, 2007: 8-10).

Many of the challenges pointed out in the 1994 White Paper on Local Government remain twenty years later. Namely, skewed settlement patterns, ongoing backlogs in service infrastructure in historically underdeveloped areas, the need for viable municipal institutions for dense rural settlements, inadequate leveraging of private sector resources for development, entrenched modes of decision-making, administration and delivery, the need to rebuild relations between municipalities, as well as substantial variations in capacity and the local communities they serve (State of Local Government Report, 2009-2010). It becomes clear that the new legislative, institutional and administrative reforms for the development of housing in South Africa are not clear-cut aspects. The success and/or failure of other department(s) functioning cooperatively regarding the provision of public housing is critical for the overall success of service delivery in general. Therefore, it is pertinent to align the institutional, administrative and financial intergovernmental processes across the three spheres of government. Phago (2003: 5) reiterates that although it is important for each department to conduct research and plan according to their needs and objectives, integrated governmental planning through the intergovernmental housing forum is salient for developing a holistic approach of government services and how intergovernmental relationships should be handled.

4.5 CONCLUSION

This chapter has established the legislative and policy framework for the provision of housing in South Africa and has identified aspects of intergovernmental relations and cooperative governance. It concludes that although local government is not directly tasked with the provision of housing, the constitutional provision of subsidiarity has increased the role of municipalities in the provision of housing – a role previously limited to provinces. This role adds to municipalities' workload who are already tasked with addressing high service delivery backlogs in water, sanitation, electricity and refuse removal. The chapter concludes by arguing that the current provision of housing policy framework is highly regulatory, prescriptive and that the decision-making process in intergovernmental bodies (such as MinMecs) do not adequately represent local government, limiting the scope for cooperative governance.

CHAPTER FIVE: FINDINGS AND ANALYSIS

5.1 INTRODUCTION

This chapter identifies some of the key issues and challenges experienced by municipalities with regards to the provision of housing. The key tensions and constraints identified in the present policy and strategy includes but not limited to the current intergovernmental relations arrangements, unfunded mandates, municipal accreditation process and capacity constraints. All these tensions and constraints have given rise to housing policy implementation challenges.

5.2 POLICY IMPLEMENTATION CHALLENGES IN THE PROVISION OF HOUSING

(i) Housing backlogs

South Africa faces a huge housing backlog. As it stands, there is still a significant housing backlog of about 2.3 million houses. Residents across the country are demanding better quality services from their municipalities. There are a number of social movements such as Abahlali baseMjondolo (Abm) in KwaZulu-Natal and the Anti-Eviction Campaign (AEC) in the Western Cape, which have emerged to deal with issues relating to government service delivery and policy. Recently, South Africa has witnessed an increasing number of service delivery protests with a specific focus on preventing evictions and campaigning for provision of housing and other basic services such as water, electricity and proper sanitation etc.

The current housing policy is based on a fundamental understanding that housing is a basic need and that the state is obliged to take reasonable measures to ensure that the right of access to housing is realised. However, housing policy has been criticized for fostering urban sprawl by locating housing delivery on the peripheries of urban areas, thereby reinforcing the spatial tendencies of apartheid and locating the poor on the periphery (Huchzermeyer, 2003; Harrison et al., 2003).

According to Charlton & Kihato, government is faced with a double-edged sword as the public housing policy dictates that the poor “are entitled to a free house, with legal title and internal services”. Tonkin (2008) argues that despite the critical importance of legal recognition of the right to adequate housing, it is far more than merely a legal issue. “The way that rights are defined and realised is largely a political process that depends on the mobilisation of citizens and civil society organisations, and the engagement of civil society with government about basic needs. The right to housing and, indeed, all economic, social and cultural rights confer a much lengthier and more complex series of obligations on government. The broad duty to promote the right to adequate housing requires government to educate the public and to strive to create a culture in which the right can become a reality” (Tonkin, 2008).

(ii) Unfunded mandates

As a result of the housing backlogs as stated above, municipalities across the country are faced with increased demands for services which include the provision of housing; however, housing provision is not a local government competence. Khumalo & Mokate (2007:271) define unfunded mandates as situations in which subnational governments are legally mandated in terms of the Constitution or by policy pronouncement to undertake specific functions but do not receive funds from nationally raised revenues in order to fulfill these functions. Furthermore, Khumalo & Mokate argue that this scenario is highlighted in cases where the framework underlying the provision of particular services require provincial or local governments to implement nationally determined minimum-service standards. However, the funding for the delivery of such services fails to reflect the cost of the service standards, forcing subnational authorities to divert scarce own-revenue funds to meet the standard set. The South African Cities Network (SACN, 2007:78) defines an unfunded mandate as when “cities perform the functions of other spheres of government and bear significant costs out of their own revenue sources”.

The Financial and Fiscal Commission (2013: 261) states that since their inception, some municipalities have raised the issue that they are compelled to perform functions which are not allocated to them in terms of the Constitution and legislation on powers and functions. Some

provinces have also pointed out that they face unfunded or underfunded mandates as a result of policy decisions made at a national level. These decisions have significant financial implications, but come without the necessary funding for their implementation. Government has put in place several initiatives to deal with unfunded mandates and the constraints they place on other spheres of government. One of the most notable initiatives to deal with unfunded mandates are the 2003 amendments to the Municipal System Act of 2000, specifically to Sections 9 and 10, which aim to prevent unfunded mandates flowing from legislative assignments; and the 2003 amendments to the Financial and Fiscal Commission Act of 1997, which requires organs of state to assess the financial and fiscal implications (and obtain the Commission's recommendations) before functions that are assigned to other organs of state in another sphere of government become law. Notwithstanding the promulgation of provisions in law that seek to deal with issue of unfunded mandates, this challenge continues to affect spheres of government, especially at local government level.

The Financial and Fiscal Commission (FFC)'s Submission for the 2012/13 Division of Revenue Technical Report conducted a study on the impact of unfunded mandates in metropolitan municipalities. What emerged from the study was that municipalities perform functions on behalf of provinces. These functions include health care services, libraries, housing services, museums and roadworks.

Table 5.1 Unfunded mandates by Metropolitan Municipality (nominal terms)³

| Type of unfunded mandate | eThekwini | City of JHB | Nelson Mandela | Ekurhuleni | Tshwane | City of Cape Town |
|--------------------------|-----------|-------------|----------------|------------|---------|-------------------|
| R million/year | 09/10 | 09/10 | 09/10 | 09/10 | 09/10 | 09/10 |
| Healthcare Services | 112.4 | 330.8 | 45.3 | 274.8 | 277.4 | 120.3 |

³ Adapted from the Financial and Fiscal Commission Submission for the 2012/13 Division of Revenue – Technical Report

| | | | | | | |
|-----------------------|---------------|-------|-------|-------|-------|-------|
| Library services | 155.6 | 133.9 | 42.7 | 45.6 | 60.1 | 274.0 |
| Museums | 35.5 | 54.6 | 16.8 | 0.0 | 14.2 | |
| Housing: new develop. | 492.8 | 547.4 | 0.0 | 519.2 | 53.5 | |
| Formal housing | 120.6 | 130.6 | -53.9 | 0.0 | 379.0 | |
| Roadworks subsidies | 0.0 | 0.0 | 5.0 | 0.0 | 0.0 | |
| Total 2009/10 | 4194.2 | | | | | |

Table 5.1 summarises the cost of unfunded mandates by metropolitan municipalities for 2009/10 financial year. It reflects that, in addition to the total amount received from provinces and other sources, the six metros have used/spent from their own budget on existing unfunded mandates. They spent R4, 194 billion in 2009/10. For housing as unfunded mandates in particular, the City of Johannesburg spent more than other metros did for 2009/10 financial year, allocating R678 million and the eThekweni municipality spent about R613 million in 2009/10

Mokoena & Marais (2007) argue that unsurprisingly, one of the burning issues relating to the current role and capacity of local government is that of 'unfunded mandates'. (Steyler, 2005) argues that common competencies create a number of problems for the effective and efficient functioning of government. They include the following: duplication of services; ineffective service delivery; unfunded mandates for the lowest level of government; the domination of local government by 'senior' levels of government; and the lack of transparency and accountability. Steyler suggests that there are basically two approaches in dealing with these problems: first, seek greater division and certainty in the division of powers; and second, develop constructive ways of managing the tension through cooperation between levels of government. Malan (2005, 241) argues that it is important that the devolution of functions to provincial and local governments

should be in line with their capacity to implement these functions in order to prevent unfunded mandates being devolved to provincial and local government. It is necessary that national government not only has a policy on the intervention of national government, but also on the resumption of functions delegated to the other spheres.

(iii) Assignment of functions

Rondinelli et al cited (De Visser, 2002) argue that a critical principle that must be imbedded in an institutional framework that envisages 'developmental local government' is a sufficient degree of local government autonomy. This autonomy is not enhanced with the mere devolution of responsibility. On the contrary, local government autonomy is compromised in a very pervasive manner if responsibilities are loaded on municipalities without the concomitant resources. Internationally, one of the biggest problems that subnational units in decentralised states experience is the dreaded 'unfunded mandate. Furthermore de Visser (2002) argues that an important prerequisite for successful decentralisation that facilitates development driven at local level is the clear allocation of responsibilities between national, provincial and local governments.

The notion of municipal accreditation by the National Department of Human Settlements is an important illustration of the assignment of functions or delegation of responsibility with regard to the provision of housing by municipalities. However, the critical question remains whether the municipal accreditation process is a feasible intervention to the intergovernmental relations and housing policy implementation challenges. Phago (2013: 6) argues that it appears that on the one hand the accreditation process of the municipalities that, selected and qualifying municipalities are accredited to provide public housing delivery, while on the other hand, however, those municipalities which are not accredited would still depend upon the national and provincial government to provide services on their behalf. This raises a concern about the accreditation process of municipalities that many or some municipalities may not qualify for accreditation, which may also mean that it will take years after these municipalities are introduced to the system. It is also argued that the municipal accreditation process is proving to be a costly decision and exercise because the understanding that housing and its associated services such as electricity,

water and sanitation among others (which make human settlements) as basic service remains elusive. The municipal accreditation process is a complex process and may therefore no longer be relevant to address the housing delivery backlogs that the country faces.

Notwithstanding the legislation requiring municipalities to play an integral role in the provision of public services including the provision of adequate housing, municipalities in South Africa have by and large not been practically and largely involved in public housing provision since this is largely the competence of provinces (although it is regarded as a shared service responsibility by provincial and national government departments). However, despite documenting the accrediting of municipalities, little has been done to capacitate municipalities in the provision of public housing (Phago, 2013: 6). What is needed is for municipalities to have competence to ensure housing provision in their areas of jurisdiction. This would be line with Section 156(4) of the Constitution which adds a significant dimension to the issue around assignments. It entrenches the principle of subsidiarity, which says that responsibilities should be allocated to the lowest level of government possible. Section 156(4) makes assignment by agreement of the administration of a Schedule 4A or 5A matter to a municipality by national and provincial government compulsory if

—

- the matter would be most effectively administered locally;
- and the municipality has the capacity to administer it.

According to de Visser (2002) uncertainty over who does what often leads to inadequate governance and will stifle the development mandate of local government. Therefore clarity over assignments, the procedures, their content and impact is therefore of paramount importance. It is argued that the accreditation process may not be sufficient. What is needed is for municipalities to have competence to ensure housing provision and to be able to take autonomous decisions in this regard.

(iv) Uneven application of policy

The Breaking New Ground Policy (2005: 8) revealed that there were gaps that had arisen between the introduction of new policy measures, legislation, guidelines and procedures and their application, including a lack of institutional coherence around key aspects such as the introduction of beneficiary contributions. However, there is currently a problem of uneven application of housing across different spheres of government. The BNG Policy (2005: 8) also acknowledges that the uneven application of policy in different provinces and regions and the resultant and inadequate enforcement of policy directives at local level (partly due to uneven capacity) has had an impact on delivery. As a result there is considerable diversity of approach and attempts to take corrective remedial action are both complex and difficult.

A case in point with regard to the uneven application of policy relates to the issue of norms and standards in housing policy. Despite the fact that the White Paper on Housing contained no specific guidelines in respect of norms and standards, some provinces had set. Later during the policy development process, some guidelines were set. Although it can hardly be denied that there is evidence of developers and contractors providing products that are inferior and poor quality, it should also be noted that stricter norms and standards have also had negative consequences (Public Service Commission, 2003). Charlton 2003 (cited in Mokoena & Marais 2007: 313) is of the opinion that the norms and standards result in low of services being implemented and that this, in turn, negates the idea of well-located development. Some municipalities, such as the eThekweni Municipality, provide an additional R10000 per site to improve levels of infrastructure. In contrast, there seems to be a prevailing opinion that too much emphasis has been placed on norms and standards, in the sense that this often creates certain unexpected policy outcomes. The most prominent evidence in this regard can be observed in the fact that houses constructed in the Free State not only have been the largest (as required by a provincial emphasis on housing size) but also have had lowest levels of infrastructure (Mokoena & Marias, 2007: 314).

In a cooperative governance context, policy needs to be communicated so that all spheres of government know and understand what policy is being pursued and implemented by government.

This implies that intergovernmental relations could work better if all spheres of government and sectors involved in the implementation of government policy communicate not only to each other but to intended beneficiaries of the policy about what the policy seeks to achieve, by when and how it will be achieved.

(v) Lack of cooperation

Layman asserts that cooperative governance had not sufficiently filtered through government, which is “still working in silos”. Furthermore, Layman argues that “the three spheres are not properly conceptualised, but are rather seen as crude layers. The minutes of the Parliamentary Committee on Public Services noted that the Minmec (Minister and Members of Executive Council) had not approved the revised norms and standards and some of the municipalities have already refused to approve new building plans. This was because up to 41, 244 houses would be lost due to the increased costs. However, the National Home Builders Registration Council (NHBRC) would not enroll houses which were inconsistent with the National Building Regulations (NBR). This illustrates the need for three spheres of government to communicate, plan and agree amongst each other about the norms and standard which in effect, is an important factor in housing policy implementation.

Malan (2005: 240) states that the system of intergovernmental relations in South Africa requires the three spheres of government to forge strong, flexible goal-directed partnerships that can promote collaboration without weakening performance and accountability. This can only happen if political office-bearers and officials in the public sector change their mindset to embrace cooperation. According to NGO Pulse public-private partnerships can provide successful case for service delivery. One such initiative that has been making an impact since 2010 is the partnership between the National Department of Human Settlements, the Mellon Housing Initiative and Standard Bank. This partnership has built over 60 houses across Gauteng and the Western Cape. The work is done in collaboration with Mellon Housing, a non-profit organisation which partners with government to create sustainable human settlements. They bring building experts to the table, who not only ensure that all the work done on the houses meets their stringent quality standards,

but who also pass on their skills to the members of the community. What makes this project unique is that not only does Standard Bank provide capital for the buildings, but the houses themselves are being built by Standard Bank employee volunteers. This confirms what Stocker (1998:19) stated that governance refers to a set of institutions and actors that are drawn from but also beyond government and that governance identifies the blurring of boundaries and responsibilities for tackling social and economic problems.

(vi) Capacity constraints

Breaking New Ground (2008: 8) states that capacity constraints exist in all spheres of government, but have been experienced most acutely local government level. The ability of local government to facilitate the establishment of sustainable housing environments is threatened by a lack of capacity to effectively package and align departmental funding streams, employ innovative planning principles, acquire affordable land and sustain a dedicated group of officials. Reddy (2001: 23) cited the pre-requisites for effective intergovernmental relations as, firstly, “a culture of co-operation, mutual respect and trust” and, secondly “capacity development”. Furthermore, Reddy argues that a lack of capacity has been seen to be a major constraint to effective delivery at the level of local government. At times this reality has been divorced from discussion of cooperative governance and intergovernmental relations, and yet it is a responsibility of higher levels of government. As Section 155(7) of the Constitution asserts: “The national and provincial government have the legislative and executive authority to see to the effective performance by municipalities of their functions”.

According to Masondo (2005: 3) who has served as the executive mayor of Johannesburg Metropolitan Municipality and Chairperson of the South African Local Government Association (SALGA), stated that there is a need to build appropriate capacity in municipalities. He further highlighted that a component of the municipal housing accreditation process is focused on the sustainable institutional capacity at the municipal level. The following quotation captures Masondo’s concerns regarding the accreditation and administrative capacities of municipalities in South Africa:

‘The critical area that we need to focus on is to ensure that sustainable institutional capacity is developed at municipal level to manage the housing processes and projects. We understand that a component of the ‘Municipal Housing Accreditation Process’ is intended to address that particular challenge. We believe that Housing Accreditation Process also needs to have focused capacity building initiatives towards urban planning and management. The phased approach to accreditation needs to ensure that municipalities are fully capacitated and resourced to expedite housing delivery’ (2005: 3).

The above statement points to the significance of having structures and practices in place that will align and coordinate the activities of municipalities with respect to the provision of housing. In this case, the constitution ought to empower municipalities with this function. The national government must assist local government through legislation, policies and other measures to develop capacity which is required for the effective exercise of the housing powers and functions. It also important to coordinate various activities relating to housing delivery and other social services, and functions of financial management and cost recovery. The issues identified above span across different departments and sectors of society.

5.3 INTERGOVERNMENTAL RELATIONS

A key weakness and tension identified in relation to provision of adequate in South Africa, is that of our intergovernmental relations system itself. The creation by the Constitution of a decentralised governance system, comprised of three distinct but interrelated spheres of government, also gave rise to the need for a systematic framework of intergovernmental relations, to give effect to the principles of cooperative governance. However, the governance system or arrangement in South Africa as also explained in this study reverts back to the idea(s) of whether to centralise or decentralise, these are some of the debates that took place during the negotiations for a democratic South Africa. The debate of whether to centralise or decentralise represents a paradox or dichotomy that occurred during negotiations about South Africa’s governance system. It is a recurring theme and a challenge still needs to be addressed, because as found in this study, there is a lively debate of where the housing function should be located between national, provincial and

local. There are strong submissions that the housing function should be located at local government level.

Malan (2005: 241) has identified two significant deficiencies of intergovernmental relations despite the implementation of the Intergovernmental Relations Framework Act 13 of 2005. The first one is that there are always a variety of processes and structures existing whose roles and relationships are mostly uncertain. The second deficiency is that while intergovernmental relations policies attempt to provide a clear and manageable structures and programmes, policy priorities often cut across ministerial mandates and traditional policy fields. With regard to this first deficiency, Phago (2013: 3) argues that in housing, the legislation makes provision for provinces to undertake the responsibilities of managing public housing provisions, while municipalities are just providing information and managing the public housing waiting list. This makes the process of access to public housing uncertain as municipal responsibility in managing what provinces are providing. With regard to the second deficiency that Malan identified, Phago (2013: 3) reasons that deficiency is substantive in this context of the study in that the National Department of Human Settlements should take into consideration possible challenges and/or obstacles whenever addressing intergovernmental relations and cooperative governance.

The challenges experienced by the municipalities in terms of the provision of housing, low income housing, or social or rental housing etc., is not limited to the Department of Human Settlements or Finance Department (National Treasury). This study has shown that the provision of adequate housing depends upon participation, planning, implementation and coordination between various government departments, different spheres of government, private sector and civil society.

It is recommended that further studies be conducted to examine cooperative governance and intergovernmental relations in general and in housing/human settlements particular in order to gauge the challenges of cooperative governance and intergovernmental relations in South Africa and propose possible solutions to address them. It is also recommended that a study be conducted

in order to establish and evaluate if the constitutional requirement on cooperative governance and intergovernmental relations as contained in the Constitution of the Republic of South Africa has not become redundant in the view of the progress that has been made in promoting cooperative governance and intergovernmental relations with specific reference to housing. It is suggested that a possibility of a constitutional amendment that will empower local government to be responsible for housing provision to be explored. This amendment might also address the policy implementation challenges that require strengthened cooperative governance and intergovernmental relations system; that will ensure that housing becomes a local government competence.

5.4 CONCLUSION

The chapter has identified that South Africa is faced with huge housing backlogs. It recognises that municipalities have an enormous role to play in delivering services to the people. However, currently municipalities are not constitutionally empowered to ensure adequate housing provision except through National Department of Human Settlement's municipal accreditation process. This chapter has presented and analysed that local government does not enjoy the autonomy to make and implement autonomous political, administrative and financial decisions pertaining to the provision of housing.

CHAPTER SIX: CONCLUSION

The literature proposes that one can apply four approaches to analysing intergovernmental relations in South Africa namely: the democratic approach, the constitutional approach/the legal approach, the financial approach and the normative-operational approach. This chapter reviews these approaches based on the findings of this research.

As stated in Chapter Two of this study, the democratic approach to analysing intergovernmental relations measures or assesses the degree of democratic autonomy or input that spheres of government have in a system of intergovernmental relations. The democratic approach emphasises provincial and local government's right to self-determination to the extent of regarding such governmental bodies as autonomous institutions (Hatting, 1998). Notwithstanding the aspiring objectives of cooperative governance as contained in law and policies in South Africa, in reality intergovernmental relations presents complexities and challenges. Housing is predominantly national government driven as seen with policies such as Breaking New Ground as well as the norms and standards, all these were set by national government while there is very little local government inputs in structures such as MinMecs. In this regard, cooperative governance is compromised when it comes to policymaking. As policy is set at a national level, budgeting and policy implementation is carried out by sub-national governments through the assigned functional frameworks. This also presents complexities and challenges in the management and implementation of concurrent functions. It is argued that intergovernmental relations hinder the provision of housing.

The constitutional/legal approach measures or assesses the legislative provisions. It suggests that the constitution and other legislative provisions may be used as a point of departure in the analysis of intergovernmental relations. In this regard, South Africa's intergovernmental relations system is centred on a constitutional/legal framework. It has made extensive provisions for intergovernmental relations and cooperative governance in legislation and policies. The

Constitution of the Republic of South Africa, 1996, amongst other things, prescribes the South African approach to the practice of intergovernmental relations. Section 41(2) of the Constitution in particular requires an Act of Parliament to establish or provide structures and institutions to promote and facilitate intergovernmental relations; and provide for appropriate mechanisms and procedures to facilitate the settlement in intergovernmental disputes. This constitutional requirement has led to the passing of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005). The promulgation of the aforementioned Act signifies the importance of the constitutional/legal approach as one of South African approaches to the study of intergovernmental relations as enshrined in the Constitution of the Republic.

The financial approach examines the importance of financial or fiscal relations among and between different spheres of government. Notwithstanding the constitutional provisions relating to intergovernmental fiscal transfers such as section 214(1) which provides for an Act of Parliament which must be responsible for the equitable division of revenue raised nationally among the national, provincial and local spheres of government; local government or municipalities from the national government's share of that revenue; however there are challenges. Once delegated the function for providing housing, local government does not enjoy the requisite financial autonomy. As a result, municipalities have accused national and provincial government of housing being an unfunded mandate. These funding complaints raise justifiable critique that cooperative governance is compromised.

The normative-operational approach examines the importance of considering all pertinent norms to analyse the total operational reality of government relations without one aspect of government relations being overemphasised at the expense (Hattingh, 1998: 14). Spheres of government are empowered in terms of law and policies to perform certain functions as it relates to the provision of housing. National government is responsible for establishing and facilitating a sustainable national housing development process, provincial government is responsible for facilitating the provision of housing in the province and local government is responsible for integrated development planning which includes taking reasonable steps to ensure that people have access to

adequate housing. With regard to local government, this role of “taking reasonable steps to ensure that people have access to adequate housing” is problematic in the sense that currently housing is not a local government competence. It is therefore that local government is best placed to represent the needs of the people (principle of subsidiarity) - however, cooperative governance is compromised if top-down.

This study regards the unfolding of intergovernmental relations in South Africa as a defining factor in how administrative and financial powers and functions require decentralisation, and what the consequences have been for delineating the extent of local government autonomy. South Africa’s housing challenges are contemporary and pertinent, and they present an opportunity to rethink the significance of cooperative governance in South Africa’s system of intergovernmental relations is to succeed. This study has shown that cooperative governance is essential for the delivery of socio-economic services such as housing. It requires a willingness across all spheres of government, including the national government’s willingness to improve opportunities for the participation and engagement of local government, civil society and the private sector into national and provincial decision-making processes in order to ensure cooperative governance across policy sectors.

The complex integrative nature of intergovernmental relations makes it clear that cooperative governance, effective communication and collaboration and coordination between all involved actors are essential tools for more effective housing service provision or delivery. The interrelationships between the involved actors will inevitably reflect on the state of the housing service provision. It is this interdependence that links them all in the first place. It is within this facilitated and established framework of cooperative governance that they must all be identified correctly and valued to their fullest.

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